Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-726

J. P. STEVENS & CO., INC., and JUNIOR ANDERSON, MASON LEE, TOMMY GARDNER, JAMES ALSTON, LARRY BURROUGHS, HAROLD GUERRY, WILLIAM HINTON, RAY MABRY, CHESTER MARTIN, ED MITCHUM, ERNEST MEADOWS, DAVE MOODY, VERNON PAYNE, TROY QUICK, JIMMY MARTIN, ROBERT RAWLINGS, MACK RENEGAR, MAX SHAVER, HOWARD SELLERS, ALLEN SHEW, EUGENE TAYLOR, JOHN THOMAS, RAYMOND THOMPSON,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Petitioner, J. P. Stevens & Co., Inc., and the individual Petitioners above named, respectfully pray that a writ of certiorari issue in order that this Court may review an opinion and decree entered by the United States Court of Appeals for the Second Circuit in a case entitled as above.

OPINION AND ORDER OF THE COURT BELOW

The opinion of the Court of Appeals is not yet officially reported, but may be found in 96 LRRM 2150

and 82 LC ¶ 10,117. The opinion and the order or decree of the Court of Appeals appear hereinafter in the Appendix to this petition. (1a and 31a).

JURISDICTION

The opinion of the Court of Appeals was entered on August 31, 1977, and the Court's order or decree was issued on October 19, 1977.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Can the Court of Appeals by its contempt power exceed the scope of the provisions of the National Labor Relations Act and infringe on an employer's right to control the use of his property by granting nonemployee union representatives access to the employer's plants and facilities in the absence of any finding by either the National Labor Relations Board or the Court of Appeals that reasonable channels of communication are not otherwise available to the union?

2. Has the Court of Appeals violated Rule 65 of the Federal Rules of Civil Procedure and the due process clause of the Constitution by imposing obligations upon an employer under threat of massive compliance fines and possible imprisonment when the contempt order fails to define specifically the extent of such obligations?

3. Does the civil contempt authority of the Court of Appeals permit the imposition in this case of obligations and penalties of the magnitude and severity mandated?

4. Can findings of the kind made by the Special Master and accepted by the Court of Appeals fulfill the "clear and convincing" standard of proof requisite for a contempt determination?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment V to the United States Constitution provides in pertinent part:

> No person shall be . . . deprived of life, liberty, or property, without due process of law. . . .

Sections 7, 8(a)(1) and 8(a)(3) of the National Labor Relations Act, 29 U.S.C. §§ 157, 158(a)(1) and 158(a)(3), provide in pertinent part:

Sec. 7—

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .

Sec. 8—

(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 of this title;

* * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. . . .

Rule 65(d) of the Federal Rules of Civil Procedure states in pertinent part:

> Every order granting an injunction and every restraining order . . . shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained. . . .

STATEMENT OF THE CASE

J. P. Stevens & Co., Inc. ("Stevens" or "the Company") is a major textile manufacturer with plants in several states including 65 plants in North Carolina and South Carolina. The individual Petitioners were in the past, and most still are, supervisory employees of Stevens. The Company currently has approximately 45,000 employees. For the last 15 years the Industrial Union Department of the AFL-CIO and the Textile Workers Union of America, AFL-CIO (now merged into the Amalgamated Clothing and Textile Workers Union, AFL-CIO), have conducted long and intensive organizing campaigns at various Stevens plants, including some of the plants in North and South Carolina.

This is one of a series of cases against Stevens involving the National Labor Relations Board ("NLRB") and these unions during the course of the unions' protracted organizing campaigns. This proceeding was initiated in the United States Court of Appeals for the Second Circuit upon a motion by the NLRB asking that the Respondents named in the motion, now the Petitioners before this Court, be adjudged in civil contempt for having allegedly violated earlier decrees of that Court.

The NLRB's motion, and a subsequent amended motion, were filed in the Court of Appeals in Septem-

ber of 1973 and January of 1974. The matters set forth in the motion and amended motion were alleged to have occurred in 1972 and 1973. Hearings were held before a Special Master in 1974. In September of 1976, the Master made his report to the Court of Appeals (App. 43a) and substantially sustained the claims of the NLRB that Stevens and the individuals named above had violated the prior orders of the Court of Appeals.

Petitioners filed extensive briefs with the Court of Appeals challenging the adverse findings of the Special Master on the grounds that such findings were neither in accord with the evidence nor based on clear and convincing proof of contemptuous conduct. The Court of Appeals upheld all the findings of fact of the Special Master, but rejected the remedies recommended by the Master and adopted directives of much greater severity.

The order of the Court of Appeals imposes an extensive number of obligations upon the Company including the requirement that the Company grant union representatives access to all the parking lots, canteens, rest and other non-work areas within each of its plants in North and South Carolina for the purpose of communicating orally and in writing with Stevens employees.

For any future violations, the order imposes "compliance fines" upon the Company in the amount of $100,000 for each occurrence and $5,000 per day for each day the violation continues, and upon the individual Petitioners, if any of them is involved in the violation, in the amount of $1,000 for each occurrence and $100 per day for each day the violation continues.

Furthermore, the order threatens the issuance of writs of body attachment against officers and agents of the Company responsible for any non-compliance with the provisions of the order.

REASONS FOR GRANTING THE WRIT

A. The Order of the Court of Appeals Transgresses the Rights of the Company in Violation of the National Labor Relations Act and the Decisions of This Court.

The order of the Second Circuit Court of Appeals poses novel and important questions regarding the extent to which a court's contempt power may be used to infringe upon an employer's fundamental right to control the use of his property, a right protected under the National Labor Relations Act and by this Court. *NLRB* v. *Babcock & Wilcox Co.*, 351 U.S. 105 (1956). This Court has only sanctioned a limitation upon this right in favor of nonemployee union representatives when there has been a finding that there are no alternative channels of communication reasonably available to the union. In this case the communication question was not considered and no finding with respect to it was made by the NLRB, by the Special Master, or by the Court of Appeals. The broad "access" edict of the Court of Appeals uses the contempt power of the Court to circumvent that which the National Labor Relations Act and this Court have prohibited. If the order of the Court of Appeals remains unchanged, the careful balance struck by this Court in *Babcock & Wilcox* between the right of an employer to control the use of his property and the right of union representatives to pursue organizational efforts would be fundamentally altered.

The portion of the order of the Court of Appeals germane to this issue provides as follows:

> 15. For the two year period, upon request of the Union, the Company shall without delay, permit a reasonable number of Union representatives access for reasonable periods of time to all its canteens, rest and other non-work areas, including parking lots, within each of its plants in North and South Carolina, for the purpose of communicating orally and in writing with the employees in such areas during changes of shifts, breaks, mealtime or other non-work periods. * * *

The above provision of the order would grant nonemployee union representatives broad access to Stevens plants and facilities in North and South Carolina. In *NLRB* v. *Babcock & Wilcox Co., supra,* this Court upheld the reversal by the Fifth Circuit Court of Appeals of an order of the NLRB requiring the respondent company to grant nonemployee union organizers access to company-owned parking lots. Although the Court reaffirmed its prior holding in *Republic Aviation Corp.* v. *Labor Board,* 324 U.S. 793 (1945), requiring that no restriction be placed on the employees' right to discuss self-organization among themselves absent a showing by the employer that such a restriction is necessary to maintain production or discipline, the decision in *Babcock & Wilcox* established that "no such obligation is owed nonemployee organizers." 351 U.S. at 113. The Court stated:

> Organization rights are granted to workers by the same authority, the National Government, that preserves property rights. Accommodation between the two must be obtained with as little destruction of one as is consistent with the maintenance of the other. (351 U.S. at 112)

In order to justify the incursion of nonemployee union organizers into an employer's plants and facilities, it must be shown that "the inaccessibility of employees makes ineffective the reasonable attempts by nonemployees to communicate with them through the usual channels. . . ." 351 U.S. at 112. Further, the inaccessibility of the employees must first be determined by the NLRB, and its determination must be supported by substantial evidence on the record.

In the instant case, the Court of Appeals has failed to justify its order permitting nonemployee union organizers access to Stevens plants and facilities. The NLRB presented no evidence that reasonable means of communication with Stevens employees are unavailable to union organizers, and no such finding was made by the Special Master or by the Court of Appeals.

The Court of Appeals decision is wholly distinguishable from *NLRB* v. *S&H Grossinger's Inc.*, 372 F.2d 26 (2d Cir. 1967), where the operator of a hotel was ordered to allow nonemployee union organizers access to the employer's property because the majority of the employees resided on the employer's premises and were not readily available to union organizers by alternative means of communication.

The doctrine established in *Babcock & Wilcox* is a "guiding principle" for resolving conflicts between union organizational rights and private property rights. *Central Hardware Co.* v. *NLRB*, 407 U.S. 539, 544 (1972). See also *Hudgens* v. *NLRB*, 424 U.S. 507, 522 (1976). The lower courts and the administrative decisions of the NLRB have adhered to the standards set forth by *Babcock & Wilcox* for determining the question of union access to an employer's plants and

facilities. E.g., *NLRB* v. *Sioux City and New Orleans Barge Lines, Inc.*, 472 F.2d 753 (8th Cir. 1973); *Yurosek & Son*, 229 NLRB No. 21, 95 LRRM 1382 (1977).

The protection afforded an employer to control the use of his property with respect to union organizers is imperative. The practical consequences of permitting union organizers free access to the non-work areas of a plant would be staggering. Non-work areas are not isolated, sealed off precincts having little relation to the working areas of a plant. What occurs in the non-work areas has a direct bearing upon the productive functioning of the plant. Under the free access mandate of the Court of Appeals, such areas could cease to be places of personal use, rest and relaxation and become instead centers of constant professional solicitation and pressure. Under such circumstances an employer would lose to a substantial degree the ability to manage its operations in an efficient and peaceful fashion.

The Court of Appeals order granting nonemployee union organizers access to Stevens plants is without legal foundation or factual justification. The right of Stevens to control its premises and to operate its business without interference or disruption would be effectively vitiated by this order, and the balance between organizational and employer rights contemplated by the National Labor Relations Act and effectuated by this Court in *Babcock & Wilcox* would be materially ignored. As this Court noted in *Babcock & Wilcox:*

> The Act requires only that the employer refrain from interference, discrimination, restraint or coercion in the employees' exercise of their own rights. It does not require that the employer permit the use of its facilities for organization when

other means are readily available. (351 U.S. at 113-4)

B. The Order of the Court of Appeals Violates Rule 65 of the Federal Rules of Civil Procedure and the Due Process Clause of the Constitution.

An analysis of the obligations imposed upon Stevens by the Court of Appeals reveals that the order of the Court of Appeals is so vague that it does not provide Stevens with sufficient notice of what conduct is proscribed and what conduct is required. Moreover, the Court of Appeals has threatened Stevens with punishment that is exceptionally punitive and indistinguishable from penalties imposed for violations of criminal statutes. Congressional enactments and the due process clause of the Constitution require that the Court of Appeals define with specificity the obligations imposed on Stevens in an order that threatens imprisonment and the imposition of massive fines.

The Court of Appeals order demands that Stevens perform certain obligations in a manner which the Court of Appeals has denominated "reasonable." Stevens is required to give the union *reasonable* notice of any speech by an agent or supervisor of Stevens on the question of union representation, and afford two union representatives a *reasonable* opportunity to be present at the speech. (¶ 12, App. 35a). In the event that the NLRB schedules an election at a Stevens plant in which the union participates, Stevens must upon the request of the union allow at least two union representatives *reasonable* access to the Stevens plant to deliver a 30-minute speech to employees during working time. (¶ 13, App. 36a). Finally, the order requires

that upon the request of the union Stevens must permit a *reasonable* number of union representatives access for *reasonable* periods of time to the parking lots, canteens, rest and other non-work areas within Stevens plants for the purpose of communicating with the employees during changes of shift, breaks, mealtime or other non-work periods. (¶ 15, App. 36a). Thus, Stevens is required to provide the union with reasonable notices, reasonable opportunities, and reasonable access to a reasonable number of union representatives for reasonable periods of time, and is threatened with writs of body attachment and substantial fines if it should be retrospectively determined by the Court of Appeals that the Company's judgment of what constitutes "reasonable" in any instance has differed from the unenunciated intentions of the Court of Appeals.

Furthermore, the levying of a fine which accumulates daily for violations which are "continuing" imposes unjustified problems of interpretation upon the Company. What constitutes a "continuing" violation is not defined in the order despite a request by the Company that the Court provide specific guidance in this regard. If an alleged violation were to be contested by the Company and its position were not ultimately sustained, and if the violation were to be determined *after the fact* to have been continuing, the daily accumulation of the fine to which the Company would be exposed could equate to $1.8 million annually for each occurrence. It has been the Company's experience that an average of four years is required for a labor practice charge to be contested through the NLRB and the Court of Appeals. If at the end of that period the violation were determined after the fact to have been con-

tinuing, the compliance fine for that incident could exceed $7.5 million. The uncertainty of what is a continuing violation combined with the harshness of the penalty could effectively deter the Company from defending against the charge.

The vagueness and the uncertainties attendant upon requirements and proscriptions denominated as "reasonable" or "continuing" are compelling reasons for this Court to grant certiorari. The courts have required, independently of any due process considerations, that no one shall be punished for the disobedience of an order which does not definitely prescribe what he is to do. Congress has imposed this requirement on the federal courts by enacting Rule 65(d) of the Federal Rules of Civil Procedure which states that "[e]very order granting an injunction and every restraining order . . . shall be specific in terms; shall describe in reasonable detail, and not by reference to the comp'aint or other document, the act or acts sought to be restrained. . . ." The reason for this provision, according to this Court, is so that "'[d]efendants . . . never be left to guess at what they are forbidden to do. . . .'" *International Longshoremen's Association* v. *Philadelphia Marine Trade Association,* 389 U.S. 64, 75 (1967) (citing H.R.Rep. No. 627, 63d Cong., 2d Sess. 26 (1914); S.Rep. No. 698, 63d Cong., 2d Sess. 21 (1914)).

In *International Longshoremen's* the Court construed Rule 65(d) to apply not only to prohibitory injunctions but also to all equitable decrees, affirmative decrees and enforcement orders of a court, thereby embracing the type of order at issue here. 389 U.S. at 75. The Court in *International Longshoremen's* did not hesitate to invalidate a court decree that did not state in specific terms the acts that were required

or prohibited. Also, other courts have set aside decrees which are not in strict compliance with Rule 65(d). *English* v. *Cunningham,* 269 F.2d 517 (D.C. Cir. 1959).

Further, this Court has on many occasions held that criminal statutes as well as civil statutes which fail to describe with sufficient detail the conduct that is prohibited are violative of due process. A contempt order that threatens a company with severe compliance fines and the imprisonment of its officers should be evaluated in the same manner as a criminal statute.

In the oft-cited case of *Connally* v. *General Construction Co.,* 269 U.S. 385 (1926), this Court defined the standard to be used to determine the constitutionality of a penal statute:

> That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law. (269 U.S. at 391)

In the more recent case of *Grayned* v. *City of Rockford,* 408 U.S. 104 (1972), the Court stated that vague laws are violative of due process because "we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." 408 U.S. at 108. Further, a

vague law is violative of due process because it "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." 408 U.S. at 108-9.

In this case, no guidance besides the term "reasonable" has been provided to Stevens to enable it to conform its conduct to a standard required by the Court of Appeals. In similar cases, this Court has voided criminal statutes on due process grounds where the ascertainable standards of guilt have been couched in terms of "reasonable." *Cline* v. *Frink Dairy Co.*, 274 U.S. 445 (1927); *United States* v. *Cohen Grocery Co.*, 255 U.S. 81 (1921).

The Court of Appeals has ignored the limitations placed on it by the due process clause and by Rule 65(d) and has issued an order that is notable for its lack of specificity. No company should be required to risk severe fines or the body attachment of its officers because subjective compliance judgments which it must of necessity make are determined after the fact not to comport with standards which have been left undefined. As this Court stated in *International Longshoremen's*:

> The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid. (389 U.S. at 76)

C. The Obligations and Penalties Mandated by the Court of Appeals Order Are Disproportionate in Both Magnitude and Severity.

The National Labor Relations Act is a remedial statute. *Virginia Electric & Power Co.* v. *NLRB*, 319 U.S. 533 (1943). While "[t]he measure of the court's power in civil contempt proceedings is determined by the requirements of full remedial relief," *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187, 193 (1949), the terms of such relief must protect public and private rights and abide by "well-settled principles of law." *McComb, supra,* at 191; *Union Tool Co.* v. *Wilson*, 259 U.S. 107, 112 (1922). The harsh and oppressive nature of the order of the Court of Appeals in the instant case would effectively transform the National Labor Relations Act into a punitive statute.

Even if it were to be assumed that the findings in this case were supported by clear and convincing proof, which the Petitioners hereinafter contend is not the case, such findings would not justify either the excessive or the punitive nature of the mandates of the Court of Appeals. "A remedy simply is not equitable if it is disproportionate to the wrong." *Austin Independent School District* v. *United States*, 429 U.S. 990, 995 (1976) (Powell, J., Burger, C.J. and Rehnquist, J., concurring).

The order imposes a compendium of obligations upon the Company which are markedly greater in scope and severity than those recommended by the Special Master. This is forcefully illustrated by the requirement of free access to union organizers which has been previously referred to. In *Babcock & Wilcox, supra,* this Court held that the NLRB improperly transgressed an employer's rights by ordering that union organizers be permitted into the employer's *parking lots.* Stevens

must allow access to *all* non-work areas. Non-work areas within a plant are integral to the plant's operations. The difference in burden and the greater potential for constant disruption between non-work area access and parking lot access needs no emphasis. Yet *Babcock & Wilcox* prohibits even parking lot access. Furthermore the access obligations imposed upon Stevens apply not only to the six plants where the alleged violations occurred, but to each of the Company's 65 plants in North and South Carolina. The free access requirement is only one of a number of obligations[1] imposed by the order upon the Company which will, in practical effect, require Stevens to aid the union in its organizing efforts. To require the Company to render assistance of that kind is both excessive and unduly oppressive.

If the Company fails in any respect at any single time to comply with the myriad of obligations imposed upon it, such failure could activate a compliance fine of potentially enormous size and pose the risk of body attachments—despite the vagueness and uncertainty which characterizes the order. The prospect that the fine for a single occurrence might accumulate to $7.5 million if the matter is contested has been previously stated. If the alleged violations found against the Company in the instant case were all continuing in nature under whatever definition of "continuing" is intended by the Court of Appeals, and if those violations had been subject to the fines imposed by the order, the total

[1] The furnishing of employee names and addresses to the union, and the inability of the Company to assemble any group of its employees in North and South Carolina without union presence and the union's right to speak last, are other examples.

of such fines could be in excess of $120 million. If the order remains unchanged, the specter of fines which could exceed the Company's ability to pay would hang over every decision and every Company action involving labor matters in North and South Carolina. In practice it could become inadvisable for the Company to defend against union charges because the risk of loss —despite the Company's conviction concerning the correctness of its position—could result in an unbearable penalty.

Petitioners submit that any analysis of the decision and order in this case leads to the conclusion that the obligations and penalties to which Stevens is subjected constitute excessive and punitive action by the Court of Appeals.

D. The Applicable Standard of Proof for a Contempt Determination Has Not Been Fulfilled.

The decision of the Court of Appeals fails to fulfill the requisite standard of proof for a finding of contempt in the following respects: 1) the findings by the Special Master do not evidence "clear and convincing" proof of contemptuous conduct; and 2) even if it were assumed, *arguendo,* that the standard of proof to justify a finding of civil contempt had been met, the penalties and sanctions imposed by the Court of Appeals demand a higher degree of proof of contemptuous conduct than was utilized.

It is well-settled that a party is not to be adjudged in contempt of a court order, even in a civil proceeding, except upon "clear and convincing" proof and "a bare preponderance of the evidence will not suffice." *Hart Schaffner & Marx* v. *Alexander's Department Stores, Inc.,* 341 F.2d 101, 102 (2d Cir. 1965).

An examination of the Court of Appeals opinion, even without reference to the Master's report, illustrates the distinctions which were necessary and the lengths to which the Special Master was forced to go to reach his findings against the Company.[2] The report of the Special Master is totally deficient in meeting the standard of proof required for a civil contempt determination. It pays lip service to the standard, but does not apply it in fact. Furthermore, the application of the standard by the Master should have been examined in searching detail by the Court of Appeals. See *Oil, Chemical and Atomic Workers International* v. *NLRB*, 547 F.2d 575 (D.C. Cir. 1976), *cert. denied*, 45 U.S.L.W. 3806 (June 13, 1977). Instead the Court accepted the Master's contempt recommendation without any apparent critical evaluation of the fulfillment of the standard other than the assertion that the standard was carefully applied. The "clear and convincing" standard is a needed protection to prevent an inappropriate use of the contempt power. The fulfillment of the high degree of proof which it requires must be scrutinized with the utmost care. The decision of the Court of Appeals does not reflect either that scrutiny or the application of that degree of care.

Even if it were to be assumed that the standard of proof to justify civil contempt had been fulfilled, the degree of proof requisite to justify the mandates of

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[2] It would seem inappropriate to burden the Court in this petition with a detailed demonstration that the NLRB has failed to prove contempt of court or even violation of law in this case. The record does establish, however, that this is true—and if this Court sees fit, by grant of certiorari, to permit the Petitioners the opportunity to make full presentation of the matter, it will be seen that evidence which is not controverted establishes that there was no violation of law and, *a fortiori*, no contempt of court in this case.

the Court of Appeals in this case have not been met. The Court of Appeals rejected the Company's contention that the absence of an improper animus made the contempt recommendation of the Master unjustified. The rejection is premised upon the holding in *Oil, Chemical and Atomic Workers, supra*, that a motion for civil contempt " 'is not to punish intentional misconduct, but rather to enforce compliance with an order of the court and to remedy any harm inflicted on one party by the other party's failure to comply.' " 547 F.2d at 581 (citation omitted). For reasons which have been delineated earlier in this petition, the order of the Court of Appeals contains directives which are excessive or punitive rather than truly remedial in nature. The imposition of penalties and sanctions appropriate to criminal contempt is tantamount to a finding that criminal contempt has occurred. Thus *Oil, Chemical and Atomic Workers, supra*, is not valid authority for the rejection of the Company's contention concerning the absence of improper animus. It is manifestly unjust to establish a lower standard of proof as the requisite to justify a contempt ruling and then to impose penalties and sanctions as though a higher degree of proof had been fulfilled. The proper administration of justice necessitates that there be accord between the degree of proof and the severity of the penalties. *Austin Independent School District* v. *United States, supra*. That accord is not present in the decision and order of the Court of Appeals.

CONCLUSION

For the reasons stated, a writ of certiorari should issue to review the opinion and order of the Court of Appeals.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 671—September Term, 1976.

Docket Nos. 30,391, 30,914, 31,164, 31,245

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

—against—

J. P. STEVENS AND CO., INC., and JUNIOR ANDERSON, MASON LEE, TOMMY GARDNER, JAMES ALSTON, LARRY BURROUGHS, HAROLD GUERRY, WILLIAM HINTON, RAY MABRY, CHESTER MARTIN, ED MITCHUM, ERNEST MEADOWS, DAVE MOODY, VERNON PAYNE, TROY QUICK, JIMMY MARTIN, ROBERT RAWLINGS, MACK RENEGAR, MAX SHAVER, HOWARD SELLERS, ALLEN SHEW, EUGENE TAYLOR, JOHN THOMAS, RAYMOND THOMPSON,

Respondents.

Opinion

Before: (August 31, 1977)

WATERMAN, FRIENDLY and FEINBERG,

Circuit Judges.

Motion to adjudge respondents in civil contempt for violation of this court's decrees ordering respondents to

comply with sections 8(a)(1), (3) and (4) of the National Labor Relations Act, 29 U.S.C. §§ 158(a)(1)(3) and (4).

Motion granted.

PAUL ELKIND, Assistant General Counsel, National Labor Relations Board (Kenneth B. Hipp, Attorney, John S. Irving, General Counsel, John E. Higgins, Jr., Deputy General Counsel, Carl L. Taylor, Associate General Counsel, Elliott Moore, Deputy Associate General Counsel, on the brief), *for Petitioner.*

WHITEFORD S. BLAKENEY, Charlotte, North Carolina (Blakeney, Alexander & Machen, of counsel), *for Respondents.*

FEINBERG, *Circuit Judge:*

The National Labor Relations Board (NLRB) has again petitioned this court for an order adjudging respondents J.P. Stevens & Co. and certain of its supervisory personnel in civil contempt. The NLRB alleges that respondents have violated the orders of this court entered under our decisions in *J.P. Stevens & Co.* v. *NLRB,* 380 F.2d 292 (2d Cir.), cert. denied, 389 U.S. 1005 (1967) (*Stevens* I); *Textile Workers Union of America* v. *NLRB,* 388 F.2d 896 (2d Cir. 1967), cert. denied sub nom. *J.P. Stevens & Co.* v. *NLRB,* 393 U.S. 836 (1968) (*Stevens* II); and *J.P. Stevens & Co.* v. *NLRB,* 464 F.2d 1326 (2d Cir. 1972) (per curiam), cert. denied, 410 U.S. 926 (1973) (*Stevens* XIII). In *Stevens* I and II, we upheld the Board's determination that Stevens had engaged in massive violations of its employees' rights under sections 8(a)(1), (3), and (4), of the National Labor Relations Act, *Stevens* I, supra, 380

F.2d at 301; *Stevens* II, supra, 388 F.2d at 903, and we entered orders requiring the Company, in substance, to comply with those sections of the Act.[1] These cases marked only the beginning of Stevens's battle with the union[2] and its lengthy history of litigation in the federal courts that has earned the Company its reputation as the "most notorious recidivist" in the field of labor law.[3] In 1972, we found Stevens and some of its supervisory personnel in civil contempt of our orders in *Stevens* I and II. *Stevens* XIII, supra. Yet, barely one year after that adjudication, the NLRB found it necessary to file its petition for contempt in this case.[4]

We appointed Monrad G. Paulsen, then Dean of the Virginia Law School, as Special Master to hear evidence in the case and make findings of fact and law. During 1974,

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1 Those orders are reprinted in the appendix of our opinion in *Stevens* XIII, 464 F.2d 1326, 1329-30 (2d Cir. 1972). The orders are substantially the same, and for the sake of simplicity, we will ordinarily refer only to the March 1968 order entered under *Stevens* II. Similarly, for the purposes of the remedies ordered in this opinion, we need not distinguish between violations of these orders and violations of our prior contempt decree, as found by the Master. The latter violations may, however, justify a more severe compliance fine. See Part II (5) of this opinion, infra.

2 The contempt proceeding in this case will be, absent intervening litigation, *Stevens* XVIII. The first eleven *Stevens* cases are listed in *Textile Workers Union of America* v. *NLRB,* 475 F.2d 973, 974 n.1 (D.C. Cir. 1973) (per curiam) (*Stevens* XII). The five subsequent cases are as follows: Our contempt adjudication in *Stevens* XIII, supra note 1; *J.P. Stevens & Co.* v. *NLRB,* 93 L.R.R.M. 2262 (4th Cir. 1976) (*Stevens* XIV and XV); *J.P. Stevens & Co.,* 220 N.L.R.B. 270 (1975) (*Stevens* XVI); *NLRB* v. *J.P. Stevens & Co. (Gulistan Div.),* 538 F.2d 1152 (5th Cir. 1976) (*Stevens* XVII).

3 Bartosic & Lanoff, Escalating the Struggle Against Taft-Hartley Contemnors, 39 U. Chi. L. Rev. 255, 256 n.4 (1972).

4 In February 1976, the Board filed another petition for an adjudication of civil contempt against Stevens in this court. At oral argument in this case, the Board appeared to indicate that this petition might be withdrawn, depending on the outcome here.

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the Master held hearings in Virginia and in North Carolina, at which he heard testimony relating to alleged violations of the court's order at various Stevens plants in the region. In all, the NLRB presented evidence involving over twenty separate alleged violations at 6 plants. Over 85 witnesses testified before the Master, and the transcript of the hearings consumed over 1,340 pages. In September 1976, the Master filed his 46-page report, sustaining the Board's claims in substantial part.[5] Thereafter, the parties filed extensive briefs and the panel heard oral argument. The NLRB does not challenge the Master's findings, but does except to the Master's failure to provide certain remedies for the violations. Respondents challenge all of the Master's findings that are unfavorable to them.[6]

I

Respondents attack the Master's findings with their own detailed description of the events, arguing that the Master improperly ignored the evidence that they presented and

5 For examples of instances where the Master found against the NLRB, see notes 12, 13 and 19, infra.

6 After oral argument, respondents filed a motion in this court for an order "implementing the geographic limitations applicable to contempt proceedings" in this case. They argued that the cease and desist provisions of our prior orders were limited to those plants where violations occurred, since that limitation was, allegedly, included in the original NLRB orders that our decrees enforced. We reject this argument and deny the motion. Our cease and desist orders made no reference to any specific geographic location, and until this motion, both parties had interpreted the orders as applying, at least, to Stevens's plants in North and South Carolina. Even if it were to be assumed arguendo that this court's cease and desist orders should have been limited geographically, those orders issued approximately ten years ago and the Company's motion must be denied as a collateral attack upon these decrees. See *NLRB* v. *Local 282, Teamsters*, 428 F.2d 994, 998-99 (2d Cir. 1970). By analogy to Fed. R. Civ. P. 60(b), our decrees were not "void" under Rule 60(b)(4), and there is no "other reason justifying relief from the operation of the judgment," under Rule 60(b)(6).

that he did not apply the correct standard of "clear and convincing" evidence in this civil contempt proceeding. See *Hart Schaffner & Marx* v. *Alexander's Department Stores, Inc.*, 341 F.2d 101 (2d Cir. 1965). More broadly, respondents claim that the case against them is predicated solely on the axiom that "Stevens should always be ruled against, because it has been ruled against in the past." According to Stevens, the record here actually reveals a "Company treating employees with careful moderation and restraint." Reading Stevens's and the NLRB's brief, we are once again struck by the "Pirandello-like effect," 380 F.2d at 296, created by the contrasting descriptions of the same events presented by each side.

Unlike our prior contempt adjudication, however, it is not our responsibility to resolve, in the first instance, the conflicting versions of events presented by the Board and respondents.[7] That task was performed by the Master, and we must stress at the outset that our review of his conclusions is a limited one. We must accept the Master's findings of fact unless they are clearly erroneous. *NLRB* v. *John Zink Co.*, 551 F.2d 799, 801 (10th Cir. 1977); *Oil, Chemical and Atomic Workers International* v. *NLRB*, 547 F.2d 575, 580 (D.C. Cir. 1976); *NLRB* v. *J.P. Stevens & Co. (Gulistan Div.)*, 538 F.2d 1152, 1160-61 (5th Cir. 1976) (*Stevens* XVII). And "[t]he party excepting to the master's findings carries the burden of proving them to be clearly erroneous." *Oil, Chemical and Atomic Workers*, supra, 547 F.2d at 580. Of course, the Master's conclusions of law are entitled to no such deference. Id. With these principles in mind, we believe that each of the Master's findings of violations of our prior decree must be upheld.

7 We performed the fact-finding function in *Stevens* XIII, supra, because of the unfortunate death of the Master in that case, Judge Edwin M. Stanley, after evidentiary hearings had been completed. 464 F.2d at 1328.

Violations at the Turnersburg Plant

The Master found three separate violations at the Turnersburg Plant in North Carolina of our decree ordering Stevens to cease and desist from "[i]n any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization . . . ." Specifically, the Master ruled that respondents prevented certain employees from distributing union leaflets during their off hours and that these "actions were undertaken with the purpose of interfering with the lawful union activities of employees."

The incident involving employees Tulbert and Dishmond is typical. On the evening before a scheduled NLRB election, off-shift employees Tulbert and Dishmond were distributing union leaflets on Stevens property, but in a non-work area. Two supervisors approached the employees and told them to leave the plant property and go to the road to hand out their leaflets, which they did. Respondents stress that no disciplinary action was taken against the employees in this case or in any of the other cases at the Turnersburg Plant. But that observation misses the point. Interference with employees' lawful union activities need not result in an outright discharge before our order would be violated. Instead, our order prohibits any discriminatory interference. The crux of the Master's finding was that respondents' actions were not taken in accordance with any published Company rule, disseminated to the employees, prohibiting such solicitation. Furthermore, no such rule against solicitation in non-work areas was, as a practical matter, ever enforced against any employee, unless union activity was involved. The Master found that

> The Company's agents had regularly tolerated substantially similar use of the plant area, even the work

> areas, to product sales and collection, they sought to enforce such "policy" as the Company had only when union organizing activity took place.

The Company responds that it would be impractical for it to publish rules dealing with all the situations that might arise with respect to solicitations and that its supervisors cannot be held responsible for knowing the "shifting sands" of labor law doctrine on where union leafletting activity may or may not occur.[8] Yet whatever the intricacies of labor law doctrine may be, it is clear that an employer may not impose "rules" on the distribution of literature which prohibits union leafletting but not other similar kinds of solicitation. See *Stevens* XIII, supra, 464 F.2d at 1336.

Nor is there any indication, as the Company implies, that the Master ignored evidence which showed that the Company had been trying to curb non-union, as well as union, solicitation on plant property. The Master specifically referred to that evidence, but pointed out that the "record is replete with evidence that no serious attempt was made by management to stop such selling [non-union solicitations] both before and after the union election."

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8 Stevens particularly objects to a violation found in another incident when two supervisors told employees Tulbert and Imes that they were not allowed to hand out union literature in the plant on the day of an election. But under longstanding Board principles, leafletting, such as that involved here, is permitted activity during an election, unless it takes place within a certain distance from the polls. See *NLRB* v. *Dallas City Packing Co.*, 251 F.2d 663, 666 (5th Cir. 1958); *Marvil International Security Service*, 173 N.L.R.B. 1260 (1963). Stevens does not argue that the leafletting was impermissibly close to the polls; instead, it emphasizes that, after the employees refused to comply with the supervisors' instructions, they were told to stop leafletting by the Board's own agent in charge of overseeing the election. But the Board's agent did not ratify the supervisors' earlier attempts to prevent the leafletting—in fact, he was apparently unaware of them—nor did he investigate the distance between the leafletting activity and the polling place. The agent's actions, therefore, do not negate the earlier violation committed by the supervisors.

In short, as the Master found, the clear and convincing evidence on the record showed a marked contrast between the Company's relaxed attitude towards non-union solicitation and its enforcement of rules against solicitation when union activity was involved. This discriminatory enforcement of its rules constitutes a violation of our prior order.

At this point, we must pause and address two of the recurring issues presented by this case—Stevens's history of labor law violations in this and other courts' and the respondents' contention that, in order to be found in contempt, they must be found to have willfully violated our prior orders. With respect to the first issue, Stevens has expressed its concern that, because of its reputation as a continuous flagrant violator of the labor laws, otherwise innocent or innocuous actions will be misinterpreted and transformed into violations of our past decrees. We are sensitive to this concern, but at the same time, we cannot allow, through a peculiar inversion of logic, Stevens's well earned reputation to shield it from findings of present violations. Here, for instance, it must be remembered that in our prior opinion holding Stevens in contempt, we found similar instances of selective enforcement of the Company's rules against solicitation. 464 F.2d at 1336. This prior holding does not directly add to the factual basis supporting the Master's conclusion, but it does provide a necessary background for assessing the Company's actions. On a practical level, the Company argues that its unwritten rules give its supervisors leeway so that its solicitation policy can conform to "common sense." Yet, the prior contempt proceeding before this court and Stevens's history of litigation unmistakably show that all too often the "common sense" of the Company and its

9 See note 2, supra.

supervisors is antagonistic to the lawful union organizational activities of its employees. By this time, it should be abundantly clear that continued reliance on the supervisor's discretion in these matters does not amount to compliance with our prior decree. Similarly, as the Master noted, "the pro-union employees expected the Company to resist their efforts with retaliatory means, an expectation nourished by . . . the Company's past record in respect to union organization." In this atmosphere, rebukes directed against employees for union leafletting may have a decidedly coercive effect, even if no formal disciplinary action follows. Compare, e.g., *Stevens* XVII supra, 538 F.2d at 1163. In short, we believe that, taking all the revelant factors into consideration, including the Company's history of labor law violations, the Master's findings were fully supported by the record.

Respondents argue, however, that, even if there were violations of the order, the violations were not willful, and they maintain that they should not be found in civil contempt unless they acted with deliberate or careless disregard of our prior order. This contention, which is broadly phrased to cover all of the violations at issue in this contempt proceeding, misconstrues the purpose of a civil contempt proceeding where the contemnor is offered the opportunity to purge himself of contempt by complying with prescribed purgation conditions.

> In this context, the longstanding rule is that good faith or lack of wilfulness is not a defense that the petitioner must negate. The rule is a salutary one, for the purpose of a motion for civil contempt . . . "is not to punish intentional misconduct, but rather to enforce compliance with an order of the court and to remedy any harm inflicted on one party by the other party's failure to comply."

Oil, Chemical and Atomic Workers, supra, 547 F.2d at 581 (citations omitted); see also *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949).[10] We see no reason to depart from this "longstanding rule" and therefore, reject the argument that a finding of civil contempt must be based on willful violations.

The Wallace Plants

The Master found five violations of our prior decree at two Company plants in Wallace, South Carolina. For the most part, these incidents involve the selective enforcement of unpublished Company rules, and require no extensive discussion other than that given above. For instance, employees Hoffman and Walker were handing out union leaflets in the Company parking lot during non-work hours and were told by a supervisor that if they did not stop, they would be fired.

Similarly, employee Covington, an active union supporter, was stabbed by a fellow employee and then discharged for fighting, ostensibly because of a Company rule that employees involved in a fight should be discharged regardless of who was the aggressor. However, there was no such rule, and the Company eventually "discovered" this fact after the contempt proceedings in this case were started. The Company also claims that the individual responsible for firing Covington was not only misinformed

10 Respondents argue that a finding of willfulness is required because "[t]he very essence of typical inquiry under [the National Labor Relations Act] is the ascertainment of the intent and the purpose of the conduct in question." This claim simply confuses the two types of intent that may be involved in a contempt proceeding. As the Master found, respondents' attempts to prevent union activity, such as leafletting, were undertaken "with the purpose of interfering with the lawful union activities of the employees." The Master did not find, nor was he required to in this civil contempt proceeding, that the respondents also acted in deliberate disregard of our prior orders.

about the supposed Company rule but also was unaware of Covington's association with the union, and that the evidence on this point was "uncontradicted." Yet, Covington testified at some length about his union activity, and the record clearly supports the Master's description of Covington as an employee with "high visibility as a union activist." More than that is not required for a conclusion that the Company discriminated against Covington because he was a union activist.

There are two incidents, one involving employee John Hunter and the other the so-called "Wallace Motel" incident, that pose somewhat different problems and require some additional discussion. Stevens attacks the Master's finding in the Hunter case as illustrative of the Master's failure to apply the "clear and convincing" evidence standard and as indicative of "how the grave offense of contempt is lightly and readily found against the Respondents . . . ." At issue is the conflicting testimony of employee Hunter and supervisor Quick. Hunter testified that he went into Quick's office to "dry some shade swatches." While there, Quick addressed Hunter as a man "he could talk to," unlike the other employees—"the boys that want the union . . . and want something for nothing." Quick then asked Hunter whether he had signed a union authorization card at the gate, and Hunter said that he had not, although he had, in fact, signed one at his home. On the following day, Quick approached Hunter and apparently asked him to find out what he could about the Union and report back to him.[11]

On the basis of this testimony, the Master was clearly correct in finding that there had been a coercive interro-

11 Hunter never did act as a spy for Quick, and Quick never pursued his request for information.

gation in violation of our prior decree. See *Bourne* v. *NLRB*, 332 F.2d 47 (2d Cir. 1964) (per curiam). In *Bourne*, we set forth some of the indicia of a coercive interrogation, and those factors are present in this case: The interrogation was conducted by a supervisor in his office; the supervisor was apparently seeking specific information about union activities; there was a background of company hostility towards the union; and Hunter's evasive response to the question whether he had signed a union card "at the gate" suggests that the interrogation did actually inspire fear. See id. at 48.

The Company argues that the Master should not have accepted Hunter's testimony at face value because Quick contradicted it. According to Quick, Hunter brought the shade swatches to his office, but then volunteered information about a fellow employee's affiliation with the union. The Master did not credit this version, noting that it was unlikely that an employee would volunteer information about union supporters. He also found that Quick's credibility was undermined by his statement that the Company hierarchy never mentioned anything to him "about keeping the union out." The Company implies that credibility judgments such as this cannot form the basis of clear and convincing evidence, unless the determination of credibility is itself clear and convincing. But this suggestion is based on a misconception of the standard we must apply in reviewing the Master's recommendations. As indicated above, the Master's findings of fact are entitled to great weight in this court, but also entitled to great weight are his determinations of credibility. See, e.g., *NLRB* v. *Ironworkers Local 25*, 86 L.R.R.M. 2532 (6th Cir. 1973), enforcing Special Master's Report printed at 86 L.R.R.M. 2524 (1973). Thus, it is ordinarily from the testimony *credited by the Master* that our assessment of whether clear and convincing evidence exists must be made. See *Stevens* XVII, supra, 538 F.2d at 1161.

As we said in our prior opinion, "mere numerical superiority of witnesses advancing a particular version of the facts" does not compel either the Master or this court to accept that version. *Stevens* XIII, supra, 464 F.2d at 1328. Instead, the Master could properly base his finding on the version that was "more internally consistent . . . or, on the whole, a far more plausible account of the events in question." Id. That is precisely what the Master did in this case, and he carefully explained his reasons for preferring Hunter's testimony over Quick's. Nor is there any merit to Stevens's charge that the Master generally accepted the credibility of the NLRB's witnesses rather than the Company's. In fact, there were two other instances of allegedly coercive interrogations conducted by a supervisor at the Wallace plants, yet in both cases, the Master found that the employee's testimony was not entirely credible and dismissed the claim against the Company for lack of clear and convincing evidence.[12] We find that the Master's conclusion with respect to Hunter must be upheld.

The "Wallace Motel" incident raises more difficult issues. The evidence, in all relevant respects uncontested, shows that in January 1973, the motel room of a union organizer was placed under electronic surveillance by two members of Stevens's managerial personnel. For much of January, that motel room was the only union meeting place. There is, therefore, little doubt that this surveillance was a blatant violation of this court's order prohibiting "surveillance of employees' activity in response to union organization," and the Company apparently concedes that the two man-

12 The employees involved in these cases were Robert Perkins and Ernest Davis.

agers involved are in contempt of the order.[13] The Company maintains, however, that it is not responsible for their actions, because it never authorized or approved the "bugging" and because, when it found out that its employees might be involved, it immediately suspended them and posted a notice to that effect.

The claim that the Company is not responsible because it did not authorize the surveillance is without merit. Both individuals involved were at the middle management level of the Company's hierarchy; their actions substantially benefited only the Company; and they acted in the realistic expectation that the surveillance was desired by the Company. Under longstanding precedent, these factors are sufficient to establish the Company's responsibility, regardless of express authorization, see *Air Chute Co.* v. *NLRB*, 350 F.2d 176, 179 (2d Cir. 1965), and this would be so even if, as some have suggested, a stricter standard for liability for actions of agents applies in a contempt proceeding. Compare *Oil, Chemical and Atomic Workers*, supra, 547 F.2d at 585, with *NLRB* v. *Schill Steel Products, Inc.*, 480 F.2d 586, 594 (5th Cir. 1973).[14]

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13 The two individuals, Personnel Manager Harold Guerry and Plant Safety Engineer Larry Burroughs, were found guilty of electronic interception in violation of federal criminal laws. *United States* v. *Burroughs & Guerry*, C.R. 73-538 (D.S.C.). A third individual, George M. Burden, was named as a contemnor by the NLRB in connection with this incident, but the Master found that there was no clear and convincing evidence that he had been involved.

14 The Company asserts that section 6 of the Norris-LaGuardia Act, 29 U.S.C. § 106, establishes the standard for assessing its liability for the acts of its supervisors in this civil contempt proceeding. This contention is unsupported by any citation and is without merit. See, e.g., *Oil, Chemical and Atomic Workers*, supra, 547 F.2d at 585; *Squillacote* v. *Local 248, Meat & Allied Food Workers*, 534 F.2d 735, 747-48 (7th Cir. 1976); *NLRB* v. *Crown Laundry and Dry Cleaners*, 437 F.2d 290, 293 (5th Cir. 1971); see also *Muniz* v. *Hoffman*, 422 U.S. 454, 457-67 (1975) (sections 1-15 of the Norris-LaGuardia Act do not apply to contempt proceedings under the Taft-Hartley Act).

The Company's final argument is that its published disclaimer "disapproving" of the surveillance and announcing the suspension of the suspected management personnel absolves it of culpability. Generally, an employer may be relieved from accountability for the actions of its agents if its disavowal is "timely, specific, unambiguous, and of sufficient scope to dissolve the coercive consequences of the supervisors' antecedent acts." *Plywood Plastics Co., Inc.*, 110 N.L.R.B. 306, 313 (1954). Here, Stevens's repudiation was timely (apparently four days after the Company was informed that members of its management personnel were under investigation in connection with the surveillance) and specific. The NLRB contends that the disavowal was, however, ambiguous because it implied that the Company only repudiated anti-union activity that was criminal, as opposed to merely violative of the labor laws. We need not, however, parse the notice for ambiguities, because we agree with the Master's statement that Stevens could not "so easily disregard the actions of such persons as actions of the Company," and his implied conclusion that the notice was of insufficient scope. Admittedly, the facts are close, but we believe that the balance is tipped by the extreme intrusiveness of the violation. In a company with an anti-union background such as Stevens's, the employees would be seriously inhibited in expressing support for a union, knowing that managerial personnel had gone so far as to "bug" the union's principal meeting place. The coercive impact of this surveillance could not be alleviated with a general statement of "disapproval." At the very least, the Company should have assured the employees that it would ignore any information obtained through the bugging. The Company, therefore, must be held to have violated our prior order.

Plants at Roanoke Rapids

We turn now to the multiple violations that the Master found at the Company's plants at Roanoke Rapids, North Carolina. All but one of these require little discussion. The Master again found instances where the Company enforced non-existing rules against active union supporters in order to interfere with employees' union organizational activities such as leafletting.[15] Also, one employee, Joseph Williams, was suspended, given more difficult work assignments, and eventually discharged because of his union activity, and another employee, Sadie Lewis, was coercively interrogated by a supervisor. The Master also found that a Company-authorized poll among its employees was a violation of the prior order. The poll asked whether a union would "help or hurt." This created an impression of Company surveillance of the employees' union affiliation because, although names were not required, the questionnaire did ask for identifying characteristics such as sex, shift, length of service and supervisor. The Company also misrepresented the results of the poll by saying that there was a majority response in favor of the union in only one of three plants polled, when in fact, if supervisors were not counted, the majority in two of the three plants thought a union would help.[16]

The one violation at the Roanoke Rapids plants that requires more discussion involves Crystal Lee Jordan. The Company strenuously protests this violation, devoting proportionately more of its attention to this case than to

15 E.g., the violations involving employees Palmer and Willie Williams.

16 Although the Master regarded the company's statement about the questionnaire as "reasonably accurate if supervisory personnel are added," the statement was still misleading even on this hypothesis. In two of the three plants, a majority of those who answered the question thought a union would help.

any other and providing a detailed refutation of the Master's findings. Without responding detail for detail, we believe that the evidence on the record clearly supports the Master's conclusion. Jordan was a member of the In-Plant Organizing Committee and, as the Company admits, an active supporter of the union. The events leading to her discharge took place in late May 1973, when the union organizational drive at the Roanoke plants was at its height. On May 29, Jordan attempted to copy a letter from the Company bulletin board that presented anti-union arguments and advised the reader to "ask your union representative" certain questions. A supervisor told Jordan that she was not allowed to do this, and, according to Jordan, warned her that she would be fired if she did not stop.[17] She stopped. The day after this incident, Jordan was called into her supervisor's office and told that she had taken her break in the wrong canteen. Jordan explained that she thought the employees had the option to eat in the canteen where she had taken her break. The meeting ended amicably, but, as the Master observed, "being called to the office is not an event without distress for union-organizing employees." Shortly after this conversation, Jordan called her union representative on a Company pay phone. Two supervisors approached her and asked her if she had not been told that she could not use the telephone on work time without permission. She said she was not aware of such a rule, and the supervisors decided to "let it go."

That evening, Jordan again attempted to copy the letter from the bulletin board having been informed by her union representative that she had that right. Again, a super-

17 Although the Master found that there was no clear and convincing evidence that such a threat had been made, he found that Jordan had been "authoritatively" told to stop copying and that this constituted a violation of our prior order.

visor told her that she was not allowed to do so, but this time she persisted. According to Jordan, the head of the Company's Fabricating Department, Mason Lee, arrived and threatened to call the police if she did not leave the plant. She refused. Shortly thereafter, she was called into Lee's office and, in the presence of five other supervisors, he began to question her about what she had been doing that evening. Before answering any questions, Jordan demanded to know the names of all those present; they refused, and she in turn refused to talk to them, clapping her hands over her ears. At that point, Lee fired her.

The Company's position with respect to this incident is that Lee had no intention of firing Jordan when he called her into his office and that she was discharged solely because of her conduct when he was trying to question her. The Master considered the Company's evidence and even noted that Jordan's "shrill conduct in the meeting . . . might well be a ground for being fired." The Company evidently believes that this admission proves its point; but the possibility that the Company had a legitimate cause for the discharge does not end the inquiry, for a discharge that is partially motivated by anti-union discrimination is also illegal. See *Stevens* I, supra, 380 F.2d at 300. Here, Jordan's discharge must be considered in context: It occurred after she had been warned several times of alleged violations of spurious rules; Lee had threatened to call the police to remove her from the plant; and when he later questioned her, it was in the company of five supervisors, some of whom had issued the prior warnings to her.[18] These facts clearly support the Master's

18 The Master also found that approximately one month before her discharge, Jordan had been coercively interrogated by a supervisor in violation of our decree.

finding that Jordan's "outburst was . . . brought about by company harassment," and that the outburst was then used as a pretext for the dismissal of an active union organizer in violation of our decree.

We have dealt at such length with the Jordan incident not only because the Company apparently views it as one of the Master's more egregious errors, but also because we believe that it serves as a paradigm of the Company's actions in this case. The pattern of using minor or nonexistent rules to harass union organizers is unmistakable. But even if this pattern were not so clear, it must be remembered that "[t]he issue of bad faith is always difficult to decide; it is seldom possible to be sure of another's state of mind, and the findings of the tribunal of first instance should be especially cogent." *NLRB* v. *Giannasca*, 119 F.2d 756, 758 (2d Cir. 1941); see also *NLRB* v. *McNally Bros., Inc.*, 417 F.2d 1029 (2d Cir. 1969) (per curiam).

We have carefully considered all of the Company's arguments against the Master's findings in the other violations found at Roanoke Rapids, as well as the violations in other plants that we have not discussed in detail. As in prior cases, "the evidence of anti-union action is overwhelming in some instances and nearer the borderline in others." *Stevens* II, supra, 388 F.2d at 899.[19] In many instances, the Company has attempted to relitigate the basic factual issues before the Master, or challenge the basis on which he credited or discredited testimony. In none of these cases has the Company shown the Master's determination to be clearly erroneous. Furthermore, our review of the record reveals that in each case the Master carefully applied the "clear and convincing" evidence standard applicable to a

19 In several instances, the Master found that the evidence was insufficient to warrant a finding of contempt under the clear and convincing evidence standard. E.g., incidents involving employees John Williams, Tinsley Hockaday and Edward Daniels. See also notes 12 and 13, supra.

civil contempt proceeding. In short, we find Stevens in contempt of our prior order on the basis of the violations detailed in the Master's Report.

II

Having upheld the Master's findings that respondents were in contempt, we turn now to the remedies recommended by his Report. We will focus primarily on the exceptions to those recommendations taken by the NLRB. In part, the Board's exceptions set forth technical deficiencies in the Master's recommendations,[20] but they also present some suggestions for broadening the scope of the remedial order. The impetus behind the Board's major recommendations is its complaint that the Master's proposals are not "broad enough and potent enough" to put an end to Stevens's blatant disregard of this court's orders and of its employees' rights under the National Labor Relations Act. One court has described the efforts at ensuring Stevens's compliance with the Act as "quixotic." *J.P.*

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20 Apparently through oversight, the Master's proposals did not include Robert "Pete" Rawlings among the list of 23 contemnors, although he found that Rawlings had coercively interrogated an employee; nor did the Master's "conclusions of law" include the violations arising from the employee survey conducted by the Company. The order entered in this case should include these violations. More significantly, the Master did not provide any remedial relief for the discriminatory discharges of employees Moses Covington, Crystal Lee Jordan, and Joseph Williams; for the suspension of employees Joseph Williams and Cheryl Ann Wasmund; or for the written reprimands or "write-ups" given employees Wasmund and Jimmy Grooms. The employees who were discriminatorily discharged should be offered reinstatement and back pay (we realize that such an offer may have already been made to Covington, but there is no finding before us that the Company's offer was adequate and that determination can be made in a back pay proceeding); the suspended employees should be offered back pay; and any unfavorable personnel reports concerning the above employees arising out of these violations should be purged from the Company's records, as we provided in our prior contempt order. 81 L.R.R.M. at 2286 ¶¶ 2-4.

Stevens & Co. v. *NLRB*, 475 F.2d 973, 974 (D.C. Cir. 1973) (*Stevens* XII). And there is the strong possibility that respondents "deliberately took their chances in ignoring our decrees because they thought it profitable for them to do so." *Stevens* XIII, supra, 464 F.2d at 1329. Stevens's position is that the Board's remedial proposals in this case are far out of proportion with the violations alleged and that "as the number and gravity of contempt allegations against Stevens diminish and decline, the Board's demand for sanctions against this Company instead of abating, escalate beyond reason." We do not agree. The record in this case speaks plainly: The violations of employees' rights are less obvious than before, but they still continue in the guise of discriminatory administration of unpublished rules and harassment that is nonetheless coercive for being more subtle. The impression remains that the Company has engaged in a "program of experimentation with disobedience of the law," *McComb* v. *Jacksonville Paper Co.*, supra, 336 U.S. at 192.

In considering the Master's recommendations for a remedial order, we are not bound by the narrow scope of review applicable to the Master's factual findings, see *Oil, Chemical and Atomic Workers*, supra, 547 F.2d at 580, but instead may accept, reject or modify his recommendations in order to provide "full remedial relief." See *McComb*, supra, 336 U.S. at 193; see generally Bartosic & Lanoff, Escalating the Struggle Against Taft-Hartley Contemnors, 39 U. Chi. L. Rev. 255, 263 n.48 (1972) and cases cited therein. The Master's proposals are in some respects narrower than the remedies we provided after the finding of contempt in *Stevens* XIII, supra. And some of the Board's proposals go beyond the scope of the *Stevens* XIII order, which is set out at 81 L.R.R.M. 2284. As indicated above, however, the Company has not raised any

specific objections to either the Board's proposals or the Master's recommendations."[21]

1. *Notice*

Beyond the normal cease and desist order, which the Master suggested and of which we approve, the Master also recommended that the Company mail a copy of the contempt adjudication and an appropriate Notice to all employees whose plants were involved in the contempt hearing. The Board proposes that this order be extended to all Stevens's plants in North and South Carolina ("statewide"). Following the pattern of our prior orders, see *Stevens* I, supra, 380 F.2d at 304; *Stevens* XIII, Compliance Order, 81 L.R.R.M. at 2286 ¶ 5, we agree with the Board that the mailing requirement should be extended to all Stevens's plants in North and South Carolina. As we have previously noted, "'there is every reason to anticipate that if not deterred, [the Company] would pursue the same discriminatory policies' throughout the region," *Stevens* I, supra, 380 F.2d at 304 (citations omitted), and this requirement is fully warranted in light of the evidence that the Company's policies "were not determined at individual plant levels alone." Id. As in *Stevens* XIII, the Notice should be signed by Stevens's president, by the chairman of the board, and by the individual respondents, 81 L.R.R.M. at 2286 ¶ 5, and, in addition, by the other members of the board and by the highest managerial official in each of the Company's plants in North and South Carolina, each of whom shall certify that he has read this opinion. The Notice should also be posted, along with a

21 At oral argument, the court invited respondents to submit a brief answering the Master and the Board on the issue of remedies. Respondents contented themselves with a three-page general discussion, broadly claiming that the "sanctions demanded by the Board have no relation to reason or present reality."

copy of the contempt adjudication, at all of the Company's Carolina plants.

The Board also proposes that the plant managers be required to read the Notice to their employees and that the Company be required to send a letter, signed by the appropriate plant managers, accompanying the Notice, which would be prepared by the Board and which would explain the Notice and the court's adjudication in nontechnical language. In our other decisions, we have discussed our difficulties with the Board's suggestion that a Company official *must* read the Notice, see, e.g., *Stevens* I, supra, 380 F.2d at 304-05, and we also believe that this proposal is unlikely to have any practical effect.[22] We therefore adhere to the remedy provided in *Stevens* XIII, 81 L.R.R.M. at 2286 ¶ 8, giving the Company the option of having the Notice read by a Board agent, with the exception that the requirement in this case should apply "statewide." In all other respects, the Board's requested relief as set forth above is granted.

2. *Reimbursement and Compliance Statement*

The Company should be required to reimburse the Board for its expenses, including salaries, incurred in this case, as provided in *Stevens* XIII, supra, 81 L.R.R.M. at 2286 ¶ 14. The Company should also pay court costs, including all costs relative to the Master. With respect to the requirement of a compliance statement, the provisions of *Stevens* XIII should apply, id. at 2287 ¶ 13, with the additional requirement that the Company file sworn statements every six months for a period of two years after our order

22 According to the Board, when the Company has had the option of having the Notice read by a Board agent or a Company official, it has chosen the latter. If it chooses that alternative in this case, we believe, as the Board suggests, that a Board agent should be present to insure that the Notice is not improperly read.

showing what steps have been taken to insure compliance with the order.

3. *Formulation of Rules for Employee Conduct and Educational Program for Supervisory Personnel*

The Master's Report recommended that the Company formulate, in cooperation with its employees and in consultation with a Board representative, "the rules which employees must follow in the plants . . ."; and that the Company establish a "continuing program for the proper education of J.P. Stevens management personnel in the area of the rights of union organizers." We find both these remedies essential to this contempt proceeding. The Company's contumacious behavior in this case is rooted in its use of "supervisory discretion." That discretion, nurtured by the Company's long history of unlawful anti-union activity, has been repeatedly exercised to discourage union participation and interfere with employees' organizational activities. This conduct is difficult to reach through court order, but we believe that the Master's proposals contain a useful and innovative approach.

We start from the proposition that the remedies provided in a civil contempt proceeding are not punitive in nature, but are imposed "to coerce the defendant into compliance with the court's order." *United States* v. *United Mine Workers,* 330 U.S. 258, 303 (1947). And in assessing the appropriate remedy, we "must then consider the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired." Id. at 304. In this case, the harm threatened by Stevens's continuing violations of our orders cannot be underestimated. The Company has flaunted its disobedience of our orders, undermining respect for this court and for the rights of

employees recognized in the National Labor Relations Act. It cannot seriously be maintained that the normal cease and desist order, or even the posting and mailing requirements outlined above, are sufficient to purge the effects of this contempt. Aside from the Company's own repeated violations, the fact is that three of the six supervisors we found in contempt in our prior adjudication are respondents again in this action.[23] The supervisors apparently believe that they are carrying out the Company's will in discriminatorily enforcing unpublished rules against pro-union employees; if we are ever to expect compliance with our orders, they must be disabused of that notion. To the extent possible, therefore, the Company must formulate rules covering areas such as employee solicitation and must make sure that they are widely published; e.g., copies of the rules should be mailed to all present and future employees and posted on bulletin boards. Supervisors, in turn, must be instructed to respect the organizational rights of the employees. We believe, therefore, that there is a pressing need for the remedies proposed by the Master. We disagree only on the scope of the order. The Master apparently suggested that at least a portion of these remedies apply only to the plants where violations occurred. For the reasons given above, however, we believe that a statewide remedy is necessary. The Company should also issue written instructions to its supervisors as provided in our prior compliance order, 81 L.R.R.M. at 2286 ¶ 7.

4. *Union Access*

The Master did not recommend any remedies designed to give the union access to Company employees. Several

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23 Supervisors Gardner and Rawlings, and department head Mason Lee, see *Stevens* XIII, supra, 464 F.2d at 1348.

such remedies were, however, provided in *Stevens* XIII, and we believe that they are once again appropriate and necessary to "dissipate the fear in the atmosphere within the Company's plants generated by its anti-union campaign." *Stevens* II, supra, 388 F.2d at 906. As in *Stevens* XIII, we order that the union be allowed to post notices on plant bulletin boards, 81 L.R.R.M. at 2286-87 ¶ 9;[24] and that the union be allowed to make a speech in response to Company speeches on union representation in all Stevens's Carolina plants, see id. at 2287 ¶ 11 (same remedy but not statewide). With respect to this latter remedy, we agree with the Board that our prior order did not sufficiently protect against the possibility that employees would be afraid of attending a union speech lest they be branded as a union supporter.[25] Therefore, we accept the Board's suggestion that a union representative have the opportunity to be present at any such Company speech and to address those employees in rebuttal. The union should also have the opportunity to make a pre-election speech, as provided in *Stevens* XIII, id. at ¶ 10, in Stevens's Carolina plants; it is not appropriate, however, as the Board suggests, to require attendance at these speeches.[26]

The Board has also requested that the union be furnished with a list of Stevens's employees, including their names and addresses, wage rates, job descriptions, and date of hire, and that the union be given access to the non-work areas of Stevens's Carolina plants, such as the canteens. A more limited version of the request for a list

24 We accept the Board's suggestion that the union be allowed two years, rather than six months, to make the request for access.

25 See *Stevens* XIV, supra, 217 N.L.R.B. at 515, enforced 93 L.R.R.M. 2262.

26 We grant the Board's request that the Company be required to allow at least another union representative to accompany any representative speaking on behalf of the union.

was granted in *Stevens* XIII, id. at 2287 ¶ 12, where we required that the union be furnished with a list of the names and addresses of the Stevens employees at the five plants involved in the contempt adjudication. In light of the statewide remedies provided throughout this proceeding and the importance of facilitating the communication between the union and the employees that has been frustrated by the Company's contumacious behavior, we believe that this remedy of *Stevens* XIII should be extended to all Stevens's employees in the Carolina plants.[27] The additional information sought by the Board in behalf of the union is, however, unnecessary. The Board points out that such information has been required in other compliance proceedings. *NLRB* v. *Schill Steel Products*, supra, 480 F.2d at 599; *NLRB* v. *Johnson Manufacturing Co.*, 511 F.2d 153, 157-58 (5th Cir. 1975). But in both those cases, the court also ordered the employer to recognize the union as the exclusive bargaining agent. No such situation exists here; instead, what is involved is a union organizing campaign, and the Board has not shown that the employees' ability to learn the advantages of self-organization is in any way dependent upon the union's access to such additional information as wage rates and job descriptions. See *Stevens* II, supra, 388 F.2d at 906.

On the other hand, we believe that the Board has met this standard with respect to its proposal that the union be allowed access to certain non-work areas of Stevens's Carolina plants. It is apparent from this contempt adjudication that the in-plant organizing activities of Stevens's employees have been frustrated and discriminated against

27 The list should include the names and addresses of those employees who will receive the mailing, see discussion at Part II (1), supra, that is, all employees at Stevens's Carolina plants who have worked for, or are presently working for, the Company since the date of the court's order in *Stevens* XIII.

by the Company's policies. We recognize that "[t]he policies of the [National Labor Relations] Act," in the context of a union organizing campaign, do not necessarily call for increased union access to the employees, but "call instead for a change in the plant's atmosphere." Id. But in this case, we believe that the two goals are complementary. Reasonable solicitations for the union should be permitted without the employees' fear that they will be reprimanded or placed under surveillance by their supervisors. Giving the union access to some non-work areas of the plants will help to reduce this atmosphere of fear, and is therefore an appropriate remedy to order in this case.

5. *Compliance Fines*

The Board has proposed that a compliance fine of $120,000 for each future violation of our orders and a fine of $5,000 a day for each day the violation continues be imposed on Stevens.[28] The Board excepted to the Master's failure to provide such a remedy, and the Master's Report contains no explanation why a prospective compliance fine was not recommended. It is well-recognized that compliance fines may be assessed in a civil contempt proceeding, keeping in mind that such fines cannot be punitive in nature. See, e.g., *NLRB* v. *Local 282, I.B.T.*, 438 F.2d 100 (2d Cir. 1970); *Oil, Chemical & Atomic Workers*, supra, 547 F.2d at 597-98; *NLRB* v. *Johnson Mfg.*, supra, 511 F.2d at 158-59. In dealing with civil contemnors, courts have imposed flat fines, see *NLRB* v. *Giannasca*, supra, 119 F.2d at 758; fines that may be avoided through compliance with the court's order within a certain num-

28 The Board has also requested a compliance fine of $1,000 for each violation and $100 for each day the violation continues for the individual contemnors, particularly the repeat offenders. See note 23, supra.

ber of days, see *NLRB* v. *Johnson Mfg.*, supra; and, more commonly, fines that are prospective only. See generally Taft-Hartley Contemnors, supra, 39 U. Chi. L. Rev. at 263-66. Furthermore, the arguments in favor of a compliance fine in this case are strong. Stevens has acted in contempt of our court decrees not once but twice, involving over thirty individual violations. Its violations have been described as "massive," "cynical," and "flagrantly contemptuous." There is no need to add any further adjectives to this chorus. We agree with the Board that a prospective compliance fine is necessary in this case in order to insure compliance with our orders.

We recognize, however, that a compliance fine in the amounts suggested by the Board is an extremely serious remedy. Even though respondents have not addressed this issue, see note 21, supra, we believe that they should have another opportunity to show that the Board's figures are unrealistic, and we so provide in the final paragraph of this opinion.

6. *Conclusion*

This case, perhaps destined to be bleakly denominated as *Stevens* XVIII in the long list of Stevens litigation, has been a troubling one not only because of the violations of the rights of the employees involved, but also because it raises grave doubts about the ability of the courts to make the provisions of the federal labor law work in the face of persistent violations.[29] It is now a decade since first we decided *Stevens* I and *Stevens* II. Since then, the Company has twice been held in contempt of our orders, and a third NLRB petition charging con-

29 We note that bills have recently been introduced in Congress that would deny federal contracts to willful violators of the federal labor law. See, e.g., H.R. 8410, 95th Cong., 1st Sess. (1977).

tempt has been filed.[30] It is true that the 71 discriminatory discharges in *Stevens* I and the 18 similar discharges in *Stevens* II constituted more blatant anti-union conduct than that now involved. But, the conduct here was illegal nonetheless, in direct violation of orders of this court, and occurred soon after our opinion in the prior contempt case. We do not take lightly the flouting of our orders not once, but twice. Nor can we view with equanimity the refusal of a large employer to abide by the law of the land and refrain from interfering with the rights of its employees. Should there be repetition of the Company's contemptuous conduct in the future, we are quite prepared to consider more drastic sanctions both for the Company and for the individual respondents than those ordered here. In short, we are determined that respondents shall comply with the provisions of the National Labor Relations Act and that the decrees of this court ordering them to do so shall be obeyed.

It is ordered that the Report of the Special Master recommending that respondents be adjudged in civil contempt of the orders and decrees of this court is hereby approved and adopted, as set forth in this opinion. The motion of the Board for adjudication of respondents in civil contempt is, therefore, granted. We direct respondents to purge themselves of contempt as set forth in this opinion. The Board should submit an appropriate order on notice, accompanied by a further, current justification of the amount of the proposed compliance fine. Respondents may submit a counter-order, with any objections to the proposed amount, within 10 days thereafter.

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30 See note 4, supra. Of course, we express no view on the merits of that petition.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 30,914, 30,391, 30,245, 31,164

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

v.

J. P. STEVENS & CO., INC., JAMES ALSTON, JUNIOR ANDERSON, LARRY BURROUGHS, TOMMY GARDNER, HAROLD GUERRY, WILLIAM HINTON, MASON LEE, RAY MABRY, CHESTER MARTIN, JIMMY MARTIN, ERNEST MEADOWS, ED MITCHUM, DAVE MOODY, VERNON PAYNE, TROY QUICK, ROBERT "Pete" RAWLINGS, MACK RENEGAR, HOWARD SELLERS, MAX SHAVER, ALLEN SHEW, EUGENE TAYLOR, JOHN THOMAS, RAYMOND THOMPSON, *Respondents.*

Contempt Adjudication

(October 19, 1977)

The Court, having on August 31, 1977, filed its opinion approving the Special Master's Report, as modified in its opinion, that J. P. Stevens & Co., Inc., and its supervisors, James Alston, Junior Anderson, Larry Burroughs, Tommy Gardner, Harold Guerry, William Hinton, Mason Lee, Ray Mabry, Chester Martin, Jimmy Martin, Ernest Meadows, Ed Mitchum, Dave Moody, Vernon Payne, Troy Quick, Robert "Pete" Rawlings, Mack Renegar, Howard Sellers, Max Shaver, Allen Shew, Eugene Taylor, John Thomas, Raymond Thompson, violated the judgments of September 1, 1967 and March 26, 1968 and the contempt order of September 13, 1972, it is

ORDERED that J. P. Stevens & Co., Inc., and its supervisors, James Alston, Junior Anderson, Larry Burroughs, Tommy Gardner, Harold Guerry, William Hinton, Mason Lee, Ray Mabry, Chester Martin, Jimmy Martin, Ernest Meadows, Ed Mitchum, Dave Moody, Vernon Payne, Troy

Quick, Robert "Pete" Rawlings, Mack Renegar, Howard Sellers, Max Shaver, Allen Shew, Eugene Taylor, John Thomas, Raymond Thompson, are in civil contempt for violating said judgments and order, and it is

FURTHER ORDERED that the Company by its officers and agents, and the individual respondents and each of them shall purge themselves as follows:

1. Henceforth all said respondents shall comply in full with the Court's judgments of September 1, 1967 and March 26, 1968 and the order of September 13, 1972 and not in any way, by action or inaction, commit, engage in, induce, encourage, permit or condone any violation of the said judgments and order.

2. The Company shall forthwith offer to the following named employees their former positions or if any such position is no longer available, a substantially equivalent job, without prejudice to their seniority of other rights and privileges:

Moses Covington, Crystal Lee Jordan
and Joseph Williams

and make said employees and Cheryl Ann Wasmund whole for all loss of pay due to the discriminatory discharges and suspensions against them, as found by the Court, with 6 percent interest thereon. The amount of such backpay, unless agreed to by the parties, shall be computed by the Board in a backpay proceeding, subject to further review by the Court.

3. The Company shall forthwith remove from the personnel files of Moses Covington, Crystal Lee Jordan, Joseph Williams, Cheryl Ann Wasmund and Jimmy Grooms any written disciplinary warnings, unfavorable personnel reports or unfavorable "write-ups" issued to said employees arising out of the violations found by the Court.

4. The Company shall preserve and upon request make available to the Board or its agents at such reasonable place or places as the Board's Regional Director for Region 11 may specify for examination, copying and reproducing all the payroll, personnel and other records necessary or useful to determine the backpay due and to verify compliance with all the provisions of this order.

5. Respondents shall post in conspicuous places in each of the Company's plants in North Carolina and South Carolina, including all places where notices to employees are customarily posted for a period of 60 consecutive days, copy of this adjudication, and, alongside, copy of a notice appended hereto as Appendix. Said Notice shall be on the form customarily employed by the Board for such purposes, and signed on behalf of the Company by its president and the chairman of its Board of Directors and each of the respondents individually, and, in addition, by each of the other members of the Board of Directors and by the highest managerial official of the plant in which the Notice is posted. Said Notice and copy of the adjudication shall be maintained in clearly legible condition throughout such posting period, and respondents shall assure that they are not altered, defaced or covered by any other material. Each of the foregoing signatories shall at the time of signing be furnished with a copy of the court's opinion which each shall read and certify that he has read it. The certifications shall be attached to the compliance reports provided for herein.

6. The Company shall at its own expense reproduce and mail to the home of each of its employees presently employed or employed since September 13, 1972, at any of its plants in North and South Carolina, a facsimile of the aforesaid signed Notice, together with a cover letter to be drafted by the Board explaining the Notice and adjudication in non-technical language. If the Company objects to any portion of the letter and the parties cannot

agree, the letter shall be submitted to the court for approval. Said letter shall be reproduced on the Company's regular business stationery and signed by the highest official of the recipient's plant. The Company shall provide the Board's Regional Director for Region 11 with proof of such mailing.

7. The Company shall issue written instructions to all its supervisors in each of its plants in North and South Carolina to comply with the provisions of the underlying judgments and order and this order and to abide by the undertakings in the Notice attached hereto as an Appendix and shall require each supervisor to signify in writing that he has received such instructions. The records of compliance herewith shall be preserved and made available to the Board as provided for herein.

8. The Company shall establish a continuing program for the proper education of Company supervisory and management personnel in all its plants in North and South Carolina in the area of the rights of union organizers and plant employees who wish to organize or who wish to join a union. The program shall be set up with the consultation of a representative of the National Labor Relations Board. It shall be established within a period of one year, and the Company shall keep the Board fully apprised of all its actions taken in connection herewith.

9. At such reasonable time after the entry of this order, as the Board may request, the Company shall convene during working time by departments and shifts all its employees in each of its plants in North and South Carolina, and, at its option, either have the Notice read by the highest managerial official in the plant or provide facilities and permit a Board agent to read the Notice to the said employees. In the event the Company chooses to have the Notice read by its official, the Board shall be afforded a

reasonable opportunity to provide for the attendance of a Board agent.

10. The Company shall, after affording the employees in each of its Carolina plants reasonable input opportunity, formulate written non-discriminatory rules governing solicitation and distribution in and upon the property of each of its said plants, provided however that in plants where the employees are lawfully represented by a labor organization, such rules shall be formulated with due regard for the rights of said labor organization. Upon formulation, the rules shall be and remain posted on all bulletin boards and other places within the plants where notices to supervisors or employees are posted, and copies shall be mailed to each and every present and future supervisor or employee. No rule governing solicitation and distribution which has the effect of regulating employees in the exercise of their rights under Section 7 of the NLRA shall be invoked or relied upon for any purpose unless and until it shall have been formulated, published and disseminated as herein provided.

11. Upon request of the Amalgamated Clothing and Textile Workers Union of America, AFL-CIO (the Union), made within two years from the date hereof, the Company shall immediately grant the Union and its representatives reasonable access to the plant bulletin boards and all places where notices to employees are customarily posted, at each of the Company's plants in North Carolina and South Carolina for a period of one year from the date of request.

12. In the event that during a period of two years following entry of this order any supervisor or agent of the Company convenes any group of employees at any of the Company's plants in North or South Carolina and addresses them on the question of union representation, the Company shall first give the Union reasonable notice thereof and afford two Union representatives a reason-

able opportunity to be present at such speech, and, upon request of said representatives, the Company shall permit one of them to address the employees for the same amount of time as the Company's address.

13. If within the next two years, the Board schedules an election in which the Union participates at any of the Company's plants in North or South Carolina, then, upon request by the Union, the Company shall afford at least two Union representatives reasonable access to each of the Company's said plants and appropriate facilities to deliver a 30-minute speech to employees on working time, the date thereof to be within 10 working days before but not within 48 hours prior to any such election.

14. Upon request of the Union, the Company shall immediately furnish it with lists of the names and addresses of all of the Company's employees at each of its plants in North and South Carolina as of the latest available payroll date, and shall furnish a corrected, current list to the Union at the end of each six months thereafter during the two year period.

15. For the two year period, upon request of the Union, the Company shall without delay, permit a reasonable number of Union representatives access for reasonable periods of time to all its canteens, rest and other non-work areas, including parking lots, within each of its plants in North and South Carolina, for the purpose of communicating orally and in writing with the employees in such areas during changes of shift, breaks, mealtime or other non-work periods. The Company shall formulate rules on this subject in the same manner as provided in paragraph 10.

16. The Company and each of the individual respondents shall file separate sworn statements with the Clerk of this Court and a copy thereof with the Director of the 11th Region of the Board within 15 days after the entry of this order, at the end of the posting period, every six

months for a period of two years, and also within 5 days after any election within the next two years at any plant in North or South Carolina in which the Union participates specifying what steps have been taken to insure compliance with the Court's directions, including compliance by all the supervisors and officers, directors and managers with the terms of the Court's decrees.

17. Respondents shall pay all Court costs including all costs relative to the Special Master and reimburse the Board for its costs and expenses including counsel fees and salaries incurred in the investigation, preparation, presentation and final disposition of these proceedings. Said amount, unlss agreed upon by the parties, shall be fixed by further order of the Court upon submission by the Board of a verified statement of such costs and expenses.

In order to insure compliance with the foregoing provisions, it is further ordered that upon the failure of the Company, its officers and agents or any of the individual respondents to comply with any of the foregoing provisions, the Court hereby assesses a compliance fine against the Company of $100,000 for such non-compliance and if the violation is of a continuing nature, an additional fine of $5,000 per day for each day of continued violation, and upon any of the individual respondents responsible for non-compliance a fine of $1,000 for such non-compliance and an additional fine of $100 per day for each day of continued violation.

The Court reserves jurisdiction to issue writs of body attachment or take other appropriate action against any officer or agent of the Company and against any of the individual respondents responsible for non-compliance

with the foregoing provisions of this order and the decrees of this Court.

/s/ STERRY R. WATERMAN
Sterry R. Waterman

/s/ HENRY J. FRIENDLY
Henry J. Friendly

/s/ WILFRED FEINBERG
Wilfred Feinberg
Circuit Judges

Dated: October 19, 1977

APPENDIX

NOTICE TO EMPLOYEES

PURSUANT TO

AN ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT HOLDING THE COMPANY AND THE UNDERSIGNED SUPERVISORS IN CONTEMPT, SEPTEMBER , 1977.

WE HEREBY NOTIFY YOU that for the second time the United States Court of Appeals has held J. P. Stevens & Co., Inc. and supervisors ROBERT "PETE" RAWLINGS, TOMMY GARDNER, and MASON LEE in contempt. In addition, the following supervisors were also held in contempt by the Court:

The Court found that these supervisors acting for the Company disobeyed judgments which the Court had issued against J. P. Stevens on September 1, 1967 and March 26, 1968 and the contempt order of September 13, 1972. These judgments and the earlier contempt order of the Court require Stevens and ALL ITS SUPERVISORS in the Company's plants in North and South Carolina to respect the rights of all employees who desire to become members of the Amalgamated Clothing and Textile Workers Union or who wish to help the Textile Workers or any other union. The Company and all its supervisors have been forbidden from interfering with, harrassing, suspending, or discharging employees, or from spying on union activity or from giving employees unfavorable "write ups", because they favor a union or desire to have a union represent them.

You will note from the most recent contempt order, a copy of which is posted alongside this notice and which you are absolutely free to read, that the Company and the above named supervisors will be assessed with substantial fines if they violate the Court's orders again. The Company will be fined $100,000 for each violation it commits, and if the violation is of a continuing nature, an additional fine

of $5,000 per day for each day of continued violation, and the supervisors will be fined $1,000 for each violation and an additional fine of $100 per day for each day of continued violation.

In its opinion on August 31, 1977 the Court said:

> "Stevens has acted in contempt of our Court decrees not once but twice, involving over thirty individual violations."
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> • • •
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> "We do not take lightly the flouting of our orders not once, but twice. Nor can we view with equanimity the refusal of a large employer to abide by the law of the land and refrain from interfering with the rights of its employees. Should there be repetition of the Company's contemptuous conduct in the future, we are quite prepared to consider more drastic sanctions both for the Company and for the individual respondents than those ordered here. In short, we are determined that respondents shall comply with the provisions of the National Labor Relations Act and that the decrees of this court ordering them to do so shall be obeyed.

WE HEREBY ADVISE YOU and we are instructing our overseers, department heads and all other supervisors in this plant and in every Stevens plant in North and South Carolina that:

SUPERVISORS MUST NOT, and we intend to see to it that THEY WILL NOT, interfere with the rights of employees which are guaranteed by the National Labor Relations Act by engaging in the following actions for the purpose of interfering with such rights:

—Discharging, suspending, or reprimanding employees or threatening employees with discharge or suspension.

—Restricting the movement of employees within the plant.

—Interfering with the distribution of Union literature in non-work areas such as parking lots, canteens and restrooms during non-work time.

—Creating rules which forbid Union activity while allowing other kinds of interference and interruptions.

—Preventing employees from copying bulletin board material during their non-work time.

—Giving employees extra duties which are not part of their regular job.

—Giving employees unfavorable "write-ups."

—Questioning employees with respect to their or any other employee's union activities.

—Asking employees to report on the union activities of others.

—"Bugging" rooms used by Union organizers or otherwise spying on Union activities.

—Conducting any employee opinion survey which might disclose, or give the impression that the Company is seeking to ascertain the attitude or opinion of an individual employee regarding labor unions.

—Or in any other manner interfering with employee rights under the NLRA.

WE FURTHER INFORM YOU that we are reinstating Moses Covington (Wallace, South Carolina plant), Crystal Lee Jordan (Roanoke Rapids, North Carolina), and Joseph Williams (Roanoke Rapids, North Carolina), who were found to have been discharged unlawfully, to their former position without prejudice to their seniority and other rights and privileges. As ordered by the Court we will also

make good all loss of pay to those employees and for the unlawful suspensions of Joseph Williams and Cheryl Ann Wasmund (Roanoke Rapids, North Carolina). In accordance with the Court's order we will also immediately remove from the personnel file any unfavorable notations, reports or write-ups arising out of the violations which the Court found.

The Court has directed that this notice be signed on behalf of the Company by the highest managerial official in this plant, by the president of the Company, and also not only by the Chairman of the Board of Directors but by each member of the Company's Board of Directors, as well.

A copy of this Notice and a letter explaining the Court's contempt order are being mailed to every employee in each of our plants in North and South Carolina.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

against

J. P. STEVENS AND CO., INC. and MASON LEE, TOMMY GARDENER, JAMES ALSTON, GEORGE BURDON, LARRY BURROUGHS, JAMES CRANFORD, HAROLD GUERRY, WILLIAM HINTON, CAMPBELL LANEY, RAY MABREY, ED MEACHUM, ERNEST MEADOWS, DAVE MOODY, TROY QUICK, MELVINA REED, MACK RENEGAR, MAX SHAVER, HOWARD SELLERS, ALLEN SHEW, EUGENE TAYLOR, RAYMOND THOMPSON, CLARENCE TURNER and JUDY WHEELER, *Respondents*.

Report of the Special Master

Monrad G. Paulsen, Charlottesville, Virginia

(September 28, 1976)

The Special Master was appointed by an Order of Reference of the United States Court of Appeals for the Second Circuit, November 14, 1973.

Pursuant to the Order of Reference a preliminary conference between lawyers for the National Labor Relations Board (Paul E. Elkind, Esquire, Assistant General Counsel for Contempt Litigation, Washington, D.C., Pargen Roberson, Esquire, Attorney for the National Labor Relations Board, Winston Salem, North Carolina, Michael Wolley, Esquire, Attorney for the National Labor Relations Board, Washington, D.C. and the Attorney for Respondent, J. P. Stevens and Co., Inc., Whiteford S. Blakeney, Esquire, Blakeney, Alexander and Machin, Charlotte, North Carolina) in the Special Master's Office, University of Virginia School of Law, Charlottesville, Virginia, December 19, 1973.

Subsequent proceedings were:

1. March 21, 1974, a preliminary hearing, Albemarle County Courthouse, Charlottesville, Virginia.

2. Hearing, Federal Courtroom, Post Office Building Statesville, North Carolina, Tuesday, May 14, 1974.

3. Hearings, Federal Courtroom, Post Office Building, Rockingham, North Carolina, May 21, 22, and 23, 1974.

4. Hearings, Federal Courtroom #2, United States Post Office, Raleigh, North Carolina, June 4, 5, 6 and 7, 1974.

5. Oral Argument, Moot Court Room, University of Virginia School of Law, Charlottesville, Virginia, November 7, 1974.

The findings of facts and conclusions of law from these hearings follow:

I. Cases Presented in the Statesville, North Carolina Hearing, May 14, 1974, Turnersburg Plant, Turnersburg, North Carolina

1. On the evening of November 21, 1972 (about 9:30 P.M.) before a scheduled N.L.R.B. election, Stevens employees *Aileen Tulbert* and *Willard Dishmond* were passing out union leaflets, outside and behind the plant on Stevens property in a non-work area, about twenty-five feet from a loading dock which was not in use at the time. [T. 63-64 (Tulbert)], [T. 89 (M. Renegar)].* Both employees were on the first shift (6 A.M.-2 P.M.) and were seeking to distribute the leaflets to third shift employees who would be coming into the plant and second shift employees who were leaving.

A few minutes after Tulbert and Dishmond commenced their activities, supervising employees, Max Shaver and Mack Renegar came out of the plant building. They had observed the employees actions and then consulted Plant

* Transcript references refer to the Statesville transcript.

Manager, Junior Anderson [T. 136 (Anderson)], who told them to ask the employees to leave the plant property to go to the roadway and hand out the leaflets. The employees immediately left the Stevens property and went to the road.

Stevens had no published rule forbidding "off-shift" employees to be present in the non-work area in which the leaflet distribution was taking place. [T. 138 (Junior Anderson)], nor, as a practical matter, had such a rule (though unwritten) been enforced against any employee [T. 131 (Junior Anderson)].

2. About the same time that night, third shift employees, *Rosetta* and *Jimmy Thompson, Rebecca Watson,* and *Bonnie Watson* were distributing leaflets to incoming fellow employees just inside the plant entrance door that enters into the shop area, an area in which various repairs to equipment are made [T. 8, 11-12, 15 (R. Watson), 38-39 (J. Thompson), 50 (R. Thompson)].

A short time after they began their activities, the employees were approached by Shaver and Renegar after Renegar had consulted Junior Anderson, Plant Manager, [T. 138 (Anderson)]. Shaver told the employees that they could not pass out literature there, that they would have to go out to the gate. Becky Watson said that the Union representatives had stated that it was all right to pass out leaflets in this shop [T. 8 (Watson)]. Jimmy Thompson was asked to go to the parking lot behind the plant to consult the Union representative again. Thompson returned and said the leafletting was "perfectly all right." The two supervisors then left. By that time, the employee's shift was going to begin so they did not resume leafletting but went to work (T. 8-9 (R. Watson), 40-43 (J. Thompson) 48-49, 54-46 (R. Thompson)].

Company witnesses testified that the employees in the shop passing out leaflets were in a dangerous work area because of welding work and oil spills on the floor [T. 86-

87, (Renegar)]; the dangers of welding and grinding [T. 119-120 (James Lazenby)]. However, the Company did not forbid employees from going into the shop area or from entering or leaving the plant through that area [T. 88 (Renegar), 98 (Shaver)]. No welding, grinding or torch work was being done the night in question [T. 121-122 (Lazenby)]. If such work had been going forward, all employees would have been stopped at the door [T. 122 (Lazenby)]. Renegar did not recall that Shaver, who spoke to the employees, based his request that the employees leave the shop area on the ground of danger, though Shaver asserted that he mentioned the point [T. 91 (Shaver)].

3. On the day of the N.L.R.B. election, employees *Aileen Tulbert* and *Amelia Imes* were passing out leaflets in a hallway just inside the employees entrance at the back of the plant to first shift employees coming to work [T. 17-18, 27-28 (Imes)]. The hallway is approximately four feet wide. Overseer, Allen Shew, testified that the hallway was congested and people could not get through [T. 146 (Shew)], but on cross examination, Shew admitted that no one actually complained about any congestion in the hallway [T. 150 (Shew)].

Shew brought Tulbert's and Imes' activity to the attention of election observers, Dean Stokes and Rosetta Thompson. His objection was put on the ground that no leaflets should be handed out during election time. He asked them to describe the situation to the N.L.R.B. agent conducting the elections. The two observers returned and, pursuant to the Board agent's direction (the agent made no investigation of the distance between the place of the election and the place of the leafletting), asked Tulbert and Imes to leave. Tulbert and Imes then went back outside [T. 32-33 (Imes), 73-75 (Tulbert)].

4. In each of the three incidents, the leafletting by the "off shift" employees on Company property, by employees in

the shop area and in the entrance hallway, the reproach of a management official to the pro-union employees passing out literature was not done pursuant to any written Company rule, nor any unwritten policy which had been communicated to its employees [T. 11 (W. Watson), 21-21 (A. Imes), 50 (J. Thompson), 67 (A. Tulbert)]. Indeed the Plant Manager [T. 113 (Anderson)] defended the lack of a published rule:

> It would be next to imposible to cover every type of situation that would come up. You would have a never-ending list, and we think that it is much better to weigh each condition on its own and handle that situation when it comes up.

No part of the testimony indicates that in any of the three incidents that Company management informed employees that it was enforcing a Company rule of general applicability.

5. Both before and after the time of the Turnersburg incidents described above, employees engaged in selling a variety of products in the plant on working time. This sales activity included the distribution of printed advertising material. Dot Hepler sold Avon Products, Jerry Turner sold Stanley Products, William Summers sold Stuart McGuire Shoes, and Amelia Imes sold Tupperware [T. 10 (R. Watson), 21, 23 (Imes) 40-41 (J. Thompson) 67-68 (Tulbert)]. There is some evidence in the record that the management discouraged employees from selling products in the plant, yet the record is replete with evidence that no serious attempt was made by management to stop such selling both before and after the Union election. Also, collections were solicited on Company time for sick employees and families of deceased employees [T. 10-11 (R. Watson)].

6. The decree entered by the Court of Appeals for the Second Circuit on March 26, 1968, 388 F. 2d 869, *cert. den.*

393 U.S. 836 ordered among other things that the J. P. Stevens Company and its officers, agents successors and assigns to cease and desist from:

> (k) In an other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join or assist Textile Workers Union of America. AFL-CIO, or any other labor organization, to bargain collectively through representative of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection, and to refrain from any or all such activities.

7. As described in paragraphs 1-3 above, the conduct of Supervisors Mack Renegar, Max Shaver, Ed Mitchum,* Allen Shew and Junior Anderson prevented employees Aileen Tulbert, Amelia Imes, Willard Dishmond, Rosetta Thompson, Jimmie Thompson, Rebecca Watson and Bonnie Watson from distributing union leaflets during their non-work time in areas of the plant which were not areas which were disturbed by their activities at the time they took place. The Company's agents had regularly tolerated substantially similar use of the plant area, even the work areas, to product sales and collection, they sought to enforce such "policy" as the Company had, only when union organizing activity took place. The Company's actions prevented pro-union leaflet distribution by the "enforcement" of non-published rules not enforced seriously against any one save union organizers. It is clearly established that the actions were undertaken with the purpose of interfering with the lawful union activities of employees.

8. There is another point. It is likely that the pro-union employees expected the Company to resist their efforts

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* Ed Mitchum was involved with Allen Shew in the episode regarding Aileen Tulbert and Amelia Imes. He requested that the two stop handing out leaflets and leave. He departed and returned with Allen Shew.

with retaliatory means, an expectation nourished by, what must be common knowledge, the Company's past record in respect to union organization. The history of the Company was referred to in the 1972 Court of Appeals opinion in this very case, N.L.R.B. v. J. P. Stevens, 464 F.2d 1326, 1328 (C.A.2, 1972):

> Respondents have flouted our prior decrees in many ways. In a continued attempt to dissuade employees from joining the Textile Workers Union of America, the Company and its management personnel in various plants, despite our prior orders, have continued to resort to such unlawful tactics as engaging in surveillance of organizing activities, interrogating employees about their union inclinations, threatening pro-union employees with discharge and other reprisals, discriminatorily altering their working conditions and discharging them because of their union sympathies . . . We regard this pattern of flagrantly contemptuous conduct most seriously.

The record shows examples of a sensitivity of the part of pro-union employees that they were engaged in an especially difficult struggle with the Company as they sought to unionize. Mrs. Amelia Imes, when asked to stop passing leaflets on Company property outside the plant, responded "I knowed my rights and I wasn't going unless I was fired" [T. 19 (A. Imes)]. Other testimony reports Rebecca Watson as saying "Well, we didn't move a damn inch" [T. 118 (Lazenby)]. Mrs. Aileen Tulbert on the occasion of passing leaflets in the main entrance when asked by a supervisor to leave testified, "I asked him if we were fired; and he said 'I did not say that.'" [T. 73 (A. Tulbert)]. This is not to say that the Company is always wrong but such testimony does indicate that the employees perceived the Company's prevention of passing out pro-union leaflets in certain places as Company action designed to interfere with or coerce employees in respect to their organizing activities.

9. The attorney for J. P. Stevens at several points [e.g. T. 14 (Blakeney)] established the fact that employees were not punished for their distribution of pro-union material. They were not discharged, "written up," or other wise disadvantaged. Such a point, however, is not relevant to paragraph (k) of the Court of Appeals injunction of 1968.

Paragraph (k) deals with the question of the interference with the exercise of employees rights by means other than direct punishment by management.

10. I find that, by clear and convincing evidence, the conduct of the Company agents described in paragraphs 1-3 violated Section K of the injunction issued in respect to this manner by the United States Court of Appeals for the Second Circuit, September 12, 1972.

II. Cases Presented in the Statesville, North Carolina Hearing, May 21-23, 1974, Plants at Wallace, North Carolina

1. *Jimmy Grooms* had been an employee at Stevens Delta No. 2 Plant for 10 years as of 1973. His department head was Ernest Meadows and his supervisor, Howard Sellers. Grooms had signed a union authorization card in January, 1973 and passed out leaflets at the plant several times and solicited other employees to sign cards. [T. 285 (Grooms)].* He personally told his supervisor that he was sympathetic to the Union [T. 287 (Grooms)]. On one occasion Grooms was also observed by a representative of management as Grooms waved to a union organizer in the plant. [T. 287 (Grooms)] On one occasion he jokingly asked Supervisor Sellers whether he would sign a union card.

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* The page reference to the Transcript is the page number of the transcript for the Rockingham, North Carolina hearing.

On June 16, 1973 Sellers asked Grooms to stay especially close to his machine because some bad cloth had been produced. Later, Grooms had to go to the toilet so he asked a near-by operator, Briggs, to watch his machine while he was away. Briggs agreed. Grooms went to the mens room without the permission of a supervisor. After leaving it, he walked a distance into a work area to ask his wife, a fellow employee, a question about their daughter who was home alone [T. 289 (Grooms)]. The conversation lasted less than a minute and Grooms went back to his work area. On the way back he met Department Head Meadows who inquired what he was doing. Grooms said he was talking to his wife and Meadows asked if he had permission from his supervisor. Grooms replied in the negative. Meadows asked if Grooms knew he was supposed to have permission to be out of the department. Grooms said "no." Meadows said he wasn't going to put up with his conduct. Meadows sought out Sellers and determined that Sellers had not given him permission to leave the department [T. 291 (Grooms)]. Meadows threatened Grooms with a discharge from his job, according to Grooms' testimony [T. 291 (Grooms)].

Later that day, Grooms was handed a written reprimand in Meadows' office for being out of the department without permission. Grooms refused to sign it because he felt he was being treated unfairly. In fact, at the time of these events the Company had no rule requiring permission for trips to the bathroom [T. 610 (Sellers)]. His brief diversion to speak to his wife also violated no Company rule of which Grooms was aware [T. 293 (Grooms)]. Horace Hooks, a fellow employee, who worked in the same department that Mr. Grooms worked in, testified that at the time of the incident here involved, he was unaware of any rule regarding leaving the job to go to the restroom and also that he was unaware of any rule concerning leaving his

department to talk with another employee [T. 308-309 (Hooks)].*

Supervisor Meadows testified that sometimes men performing Grooms' job had others keep an eye on their machines when the operator went to the toilet. He admitted that he had never told employees not to have anyone else keep an eye on their machine [T. 601 (Meadows)] and that he had never "noticed problems with the cloth because of utility men watching the machines." [T. 603 (Meadows)].

2. I find that the Company reprimanded Jimmy Grooms, a well known pro-unionist, in order to discourage Union membership. I find that Grooms was selected for discipline regarding conduct which was commonly engaged in by others not involved in union organizing. Such conduct of the company is "clear and convincing evidence" that the reprimand was given with unlawful purpose of discouraging union activity.

3. *Moses Covington* was an employee of Stevens from May, 1966 to July, 1973. He was very active in the Union organizing campaign. Early in the organizing effort, he signed a union authorization card. He was influential in persuading four or five others to do the same. He had talked at the instigation of a union organizer who visited him in his home, to some of his fellow employees and arranged an organizational meeting. During the organizational effort, he also passed out leaflets five or six times [T. 424-425 (Covington)]. Further, he had volunteered to pass leaflets in another Stevens plant in Rockingham.

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* A fellow employee, Tommy Douglas, also testified that he was unaware of any rule regarding not leaving his department to talk to another employee. Indeed he, employed in Grooms' department, testified that he went to the restroom without seeking permission and stopped to talk to another employee without being reprimanded in any way even though, he testified, that Mr. Meadows had seen him going to the restroom and talking to the other employee. [T. 415-417 (Douglas)].

He was seen by supervisors for management while he passed out literature and he was observed by a management official greeting a union representative enthusiastically in the plant [T. 427 (Covington)].

On the 18th of July he went to work as usual picking up his riders. There was considerable teasing and joshing in the group, much of it directed at one William Reed, who became quite angry. When the party arrived at the plant grounds and parked the car, Reed approached Covington with a knife and cut him deeply on the left shoulder and on his hand. Covington was taken to the doctor and was sewed with 27 stitches. He was told by management to go home and they would be in touch with him. The Personnel Department of the plant did not contact Covington, but on July 26 when he went to the plant to pick up his pay check for work performed prior to the assault, he was told by Personnel Director, Chester Martin, that he no longer had a job with Stevens. Martin explained that he was discharged for "fighting" and that whenever two employees were involved in any fighting on Stevens property, both were automatically fired [T. 429-433 (Covington)].

4. In point of fact, Martin was wrong about Company policy. "Members of supervision" first brought this to the attention of Industrial Relations Manager, H. E. Greene, who said he had made the decision to discharge Covington. At that time Greene took no action respecting Covington. Later, the true statue [*sic*] of Company policy was brought to Greene's attention once more (mid September, 1973) by an N.L.R.B. Field Examiner [T. 681-682, 685 (Greene)]. Even then, the Company did not offer reinstatement and back pay to Covington until the end of February, 1974.

The fact that Covington's discharge was not in accordance with general Company policy is attested by the fact that several incidents were described in which both parties to a fight were not fired.

5. I find that Moses Covington was discharged as an interference with his lawful union activities and generally to discourage membership in the Union. The fight, was, in my opinion, a splendid pretext to get rid of Covington, an important leader in the pro-union employee group; a ground which was covertly discriminatory against active union personnel. Motivation is, of course, not easy to establish but it is important to underscore Greene's failure to offer Covington remedial action until several months after he had been informed for the second time and that the reason given to Covington for his discharge was not a reason grounded in established Company policy. These actions, together with Covington's high visibility as a union activist taken in the context of the Company's vigorous anti-union policy provides clear and convincing evidence that Covington was disadvantaged for exercising his rights.

6. Two fellow employees, *Paul Hoffman* and *Harold Walker* on either September 9 or October 9, 1972 distributed leaflets in the Stevens parking lot between Plants 2 and 3. They were "off-shift" employees—i.e. neither leaving their shift nor about to go to work. After having been told by a guard that they could not pass out leaflets in the parking lot, Walker responded that he had a right to do so under Federal law [T. 477 (Walker)]. The guard, Butler, left and returned with Personnel Director, John Thomas. Thomas told them to leave, which they did not do immediately. Thomas told them they were "fired," according to testimony of Hoffman [T. 488 (Hoffman)]. According to Walker, Thomas told them to "pick up our checks" [T. 477 (Walker)].

Hoffman, the next day, reported to Thomas at his office but was told the matter would be looked into further. Hoffman was called and told to report to work the next morning. At that time Personnel Director, Thomas, in the presence of Department Head, Turner, told Hoffman that he

was being taken back because of his record and his long service, but that if the incident were to be repeated, ("like the other night") he would be fired [T. 451 (Hoffman)].

When Walker reported to Thomas the next day as he had been told, [T. 177-178 (Walker)] he was informed by Thomas that there was a production difficulty which supposedly was Walker's fault and he would have to look into it further. The next day Walker returned to see Thomas who said the production matter had been resolved but Thomas warned that he would not "tolerate this mess that happened that Monday night before" [T. 478-479 (Walker)].

7. The Company had no published or well publicized rules respecting passing out union literature on plant parking lots or prohibiting "off-shift" employees from coming on to Company property [T. 451-452 (Hoffman), 480-481-482 (Walker)]. Surely no such rules were understood by the Company employees seeking to join a union. When the Company interfered with seemingly lawful conduct for the first time a strong inference arises that the "new" rule was made to intimidate union organizers. Such an inference becomes very strong when the Company involved is well-known for its tenacious opposition to unionization.

8. I find that the Company acting through Mr. Thomas at the Company parking lot sought to interfere with and restrain employees in their organizing efforts by forbidding leafletting in the parking area.

9. Further, I find a violation of the 1968 injunction in that the Company threatened employees with discharge if they supported the Union.

10. Both Hoffman and Walker seemed on the witness stand, very conscious of the need to tell the truth. Thomas did deny he fired or threatened to fire the pair at the parking lot but it is clear that they both reported to Thomas' office the next day and did pick up a check for what was

then owing in wages—a procedure not an everyday occurrence. Both Hoffman and Walker testified as to a threat of firing on their respective second visits to Thomas.

11. *Robert Perkins* testified that he was an employee in the J. P. Stevens Inspection Department at the Delta No. 2 Plant in the Fall of 1972. Clarence Turner was supervisor in that department [T. 485 (Perkins)]. When asked whether he had had conversations with any supervisors about the Union, Perkins responded affirmatively. He told of a conversation at the home of Clarence Turner during the football season. Perkins frequently worked in Turner's yard [T. 617 (Turner)]. On the day in question Perkins did no yard work but had a conversation with Turner. Perkins raised the question asking how did Turner feel about the Union, and Turner responded that every man was entitled to his own opinion [T. 486 (Perkins)], [T. 619 (Turner)]. Then, according to Perkins, Turner asked whether Perkins had signed a card, and Perkins responded affirmatively. Further, Perkins testified that he had gotten a few others to sign too, but on break time, not on company time. According to Perkins, Turner asked for the names of persons to whom Perkins had talked about the Union [T. 488-489 (Perkins)]. Perkins testified that he asked Turner for $5.00 to take his wife to a movie and that Turner responded that he would try to the [*sic*] $5.00 if Perkins would give him "a name." (According to Perkins, the $5.00 apparently was to be given for the name of a ring leader.) Perkins testified that when it was clear to Turner that Perkins was a little upset by the linking of a $5.00 loan to the giving of names, Turner got Mrs. Turner to provide the money and either Turner or his wife gave it to Perkins [T. 495 (Perkins)]. Perkins had told an N.L.R.B. Field Examiner that Mrs. Turner had heard her husband ask Perkins to give the names of Union members for $5.00. He failed to confirm this statement at the hearing before the Special Master [T. 497 (Perkins)].

Perkins also testified that he owed Turner for a rod and reel, and the balance due was about $10.00 [T. 495 (Perkins)].

Turner denied Perkins testimony respecting the solicitation of union names [T. 648 (Turner)]. He testified that he was aware of the fact that he should not engage in conversation with employees about the Union unless an explicit question was asked. In that event, supervisors could express their opinion of the Union, but could go no further [T. 652 (Turner)].

12. *Mr. Ernest Davis* was employed by J. P. Stevens at Wallace, North Carolina in the autumn of 1972. He testified that he approached his department head, Mr. Clarence Turner, during September or October of that year and and asked him for the day off [T. 269 (Davis)]. Turner responded "okay, but wait a minute, I want to talk to you." The two then went to Turner's office. Turner asked what Davis would do with the day off. Davis responded that he was going to look for a job. Davis was unhappy with his job and about racial imbalance in the plant [T. 270 (Davis)]. According to Davis, Turner said "Well, maybe I shouldn't ask you this, but how deeply are you involved in the Union?" Davis responded that he signed a card [T. 270 (Davis)]. Davis testified that he believed Turner asked him who he had talked to but Davis refused to respond. Further, Davis said he "believed" that Turner had said it was all right so far as he was concerned whether a person was involved in the Union or not.

According to Turner's testimony, Davis brought up the subject of the Union when talking about racial imbalance. Unionization, according to Davis, would help alleviate that problem. Turner said his response was that he wanted to hear nothing about the Union.

13. In the cases outlined in paragraphs 11 and 12 above, the essential facts are in dispute. The answer to the question, did Clarence Turner, Jr. interrogate an employee

concerning union activity by that person or other employees, depends upon the credibility of Mr. Perkins in one case and Mr. Davis in the other.

There is some reason to credit Perkins and Davis respectively and not to credit Turner. Turner a relatively young, ambitious man in management, knew of the Company's opposition to unionization and therefore had every personal motive for getting bits and pieces of information which might further that policy. In addition, in the two cases Turner put his alleged questions to two persons he might have reasons to believe would listen to an inquiry about a union and forget the incident. Perkins seems to have been somewhat dependent upon Turner for a little work and some handouts, and Davis was seeking a favor at the time the question about his union activity was allegedly asked. An N.L.R.B. Field Examiner did say in a report after interviewing Turner not too long after Turner's alleged conversation with Davis that Turner admitted asking Davis (after Davis had said that a Union would be a good thing). "So you mean you are involved in it?" Yet the record was made by the Field Examiner and Turner had not read the report. The report was essentially the creation of the Field Examiner.

14. I would find if the standard of proof were a standard of a bare preponderance of the evidence, that the conversations to which Perkins and Davis testified, in fact, had taken place. But the standard of proof is different—the facts must be established by "clear and convincing evidence" which has been described as a "very heavy burden." e.g. N.L.R.B. v. Decatursville Sportswear, 518 F.2d 788 (C.A.6), cert. den. 96 S. Ct. 217 (1975). The present cases are not ones where discriminatory action was taken in respect to a failure to observe company "rules" (unpublished and unpublicized). The issue is one of credibility respecting a content of conversations.

15. I therefore find against the position of the N.L.R.B. in respect to these two incidents. I am left with some doubt

over which of the parties is telling the truth and no objective facts are established to dispell the doubt to the degree required by the standard of clear and convincing evidence.

16. *Mr. John Hunter* was a machine operator for J. P. Stevens in October, 1972 in Wallace Plant No. 2. Hunter testified that Troy Quick, a department supervisor had inquired of him concerning his union activities and asked him to report to Mr. Quick on the union activities of other employees. Accordingly, to his testimony he had brought some shade swatches through the light which had to be inspected by his supervisor, Mr. Quick. The swatches were brought to Quick's office where Hunter found Quick and Bill White, a supervisory employee [T. 505 (Quick)]. According to Hunter, Quick said to White "this is the man I want to see. I can talk to him." Quick further identified other employees about whom he said according to Hunter's testimony, that they "want the Union, want to work half-time and want something for nothing." Hunter replied that he was aware of that situation. Where upon Quick asked if he had not signed a union card at the gate. He had signed one at his home and thought the Company was aware of it [T. 506 (Hunter)]. Later, according to Hunter, Quick had another conversation with Hunter in which Quick asked him to find out what he could about union activity in the plant and to inform Quick. Hunter agreed to do so [T. 508-509 (Hunter)].

Quick's version of the original conversation [T. 66 (Quick)] was that Hunter had brought in the shade swatches and volunteered that Pharoh Jacobs had said that he would be glad if the Union would come in here, that he would probably get something out of it. Quick testified that he only replied, "John, I am not for a union and I don't want anything to do with one." Quick's testimony failed to deny any of Hunter's testimony respecting his second conversation with Quick. Supervisor White, denied

Hunter's testimony respecting the conversation in Quick's office but he did not corroborate Quick's version [T. 672 (White)].

17. I find that by the testimony of "clear and convincing evidence" Hunter's version of the events are substantially correct. It is highly unlikely that an employee would come into a supervisor's office and volunteer information about union supporters without being asked. Furthermore, Quick's testimony despite his long time service with Stevens that higher Company officials never mentioned to him anything about keeping the Union out seems extremely improbable and undermines Quick's credibility. Therefore, I find that Quick did interrogate Hunter about the Union and asked him to give information about the union activities of his fellow employees. I have employed the test that the evidence be clear and convincing.

18. *George M. Burden, II, Harold Guerry, Larry E. Burroughs.* The following evidence bears on the contempt charges against George M. Burden, Harold Guerry and Larry E. Burroughs, arising out of the Court of Appeals decree of March 26, 1968 against J. P. Stevens Company and its officers. These charges are that the above named persons participated, in one way or another, in an incident of electronic eavesdropping in respect to Room 24 of the Wallace Motel, Wallace, South Carolina in January 1973. The Wallace Motel was located immediately across the road from the local Stevens plant.

Room 24 was occupied by Mr. Alfred Motley, a representative of the Industrial Union Department of the A.F.L.-C.I.O., from October 31, 1972 until January 22, 1973. Mr. Motley was engaged in organizing the Stevens employees into a local of the Textile Workers of America. Room 24 was extensively used for meetings of Union organizers and prospective union members. From January 10 to January 22, 1973 the room was substantially the only Union meeting place.

On January 17, 1973 Motley discovered the telephone did not work properly [JX* 26-28 (Motley)]. The problem was reported to a Ms. Kimrey on January 17, 1973 who worked at the Wallace Motel switchboard. [JX 31 (Motley)] [JX 166 (Kimrey)] and to Ms. Garnet Coburn [JX 140 (Coburn)]. Ms. Della Richardson, owner and operator of the Wallace Motel was also informed of the problem by Ms. Coburn [JX 144 (Coburn)]. The phone was still "out of order" on January 18, 1973 [JX 33 (Motley)].

The basic difficulty with the telephone was that it caused a small light at the motel switchboard to be activated at all times and caused a buzzing as if someone in Room 24 were trying to reach the telephone switchboard. The telephone had been "modified" so that no calls could be received or made from Room 24, however, the telephone would pick up the sound of voices in Room 24. These could be heard in any other room by the telephone there if the switchboard would connect the room with Room 24. Mr. Raymond Price, an employee of the Southern Bell Telephone Company testified about the "modification:"

> Basically modification would make the transmitter work and the receiver inoperative, no matter what position the hand set is in, whether it's on the cradle or off the cradle doesn't make any difference. . . . [T 231 (Price)].

With the arrangement on this telephone here, as soon as this arrangement was made the light under-

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* JX refers to the transcript of the Federal Criminal trial at the end of which Mr .Harold Guerry and Mr. Larry Burroughs were found guilty of electronic interception in violation of federal criminal laws. This transcript was a joint exhibit of both parties in this contempt case. The transcript admitted into evidence with the parties agreeing that the Special Master should regard the testimony given in the criminal trial as representing the testimony which would have been given had the witnesses testified directly in the contempt hearing. [TR 210-217]

neath this room number would have come on, and also the buzzer that is associated with the switchboard would have started buzzing, making a sound. With that signal the operator would plug into that jack to see what the people wanted. Now, with this phone as it is here, the person in that room could not talk through the instrument or could not hear through the instrument, but the operator could hear what was going on in the room. It would give the appearance that the telephone was off the hook, or had fallen on the floor, or whatever. In other words, it was energized, but she couldn't hear anybody or they couldn't hear her.

Another way so that the operator could hear everything that was going on in the room, if she plugged into his room jack, she could also take the cord arrangement you have got with this jack, you could also plug it into another room number, another room. That room could now, through here, hear what is going on through this telephone instrument. [T 236 (Price)].

19. Stevens Plant Safety Engineer, Mr. Larry Burroughs, was the principal actor and planner in placing the modified telephone in Room 24. He sought to obtain surveillance equipment from the Chief of Police of Cheraw, South Carolina. He spoke to Ms. Kimrey of his desire to hear what was "going on" in Room 24 and inquired concerning details of the operation of the switchboard (JX 177, MK** 5 (Kimrey)]. Ms. Kimrey also testified that she told Burroughs that "he was crazy to try anything." Ms. Kimrey later asked Burroughs if he had "learned anything," and he replied "yes it was invaluable." [JX 177-178 (Kimrey)].

Burroughs also spoke with owner, Ms. Della Richardson, and asked about switching telephone instruments and installing a listening device [JX 203 (Richardson)]. Further, Burroughs told Richardson to call him at the plant if "anything went wrong."

** This sign MK refers to a deposition given by Ms. Kimrey and found in the exhibits submitted at the Rockingham hearings.

Burroughs was seen in Room 24, to which he had access by a key. He carried a brown box with a telephone in it. About noon of that day, January 17, 1973, the switchboard was illuminated by the phone in Room 24 by Ms. Richardson was [*sic*] unable to receive a reply from the room.

Robert Robertson, an FBI agent, tested the phone on January 18 and discovered that the telephone while the receiver was in the cradle, would nevertheless cause signals at the switchboard. Later he received that telephone instrument from a representative of the Telephone Company [JX 249 (Robertson)].

20. Ms. Kimrey called Harold Guerry, Stevens Personnel Manager and told him about the discovery that the phone in Room 24 did not operate properly [MK 12-13 (Kimrey)].

Mr. Guerry called the phone company to fix the phone but they would not do so unless someone from the motel requested it [T. 252 (Robertson)]. Guerry called Ms. Kimrey and asked her to make the request of the phone company. When Mr. Guerry called the phone company he spoke to Mr. Jerry Mims, a phone company repairman who normally worked on Stevens telephones and instructed him to get the phone out "intact" and replace it. Mims also indicated that Guerry told him in a low voice that the room with the inoperative phone was occupied by the "T.W.U. or something like that" [JX 99 (Mims)] [JX 309 (Guerry)]. The phone was removed by the telephone company and was replaced at the special request from Ms. Kimrey at the motel [JX 106 (Mims)]. The telephone company turned the modified instrument over to the FBI.

21. On January 23, 1973 a meeting of Company officials including Executive Vice President of the Cotton and Blend

Division, Paul Nipper; Industrial Relations Manager H. E. Greene, and Delta Plants #2 and #3 General Managers Traynham and Moore was held in Respondent's Counsel's office in Charlotte, North Carolina [T. 582 (Moore)]. The general managers were informed that Stevens' supervisory employees Harold Guerry, Larry Burroughs and George Burden were being suspended because the Company "did not and would not condone or tolerate any activity of any supervisor outside the realm of the law" [T. 582-583 (Moore)].

22. On the 27th and 28th of January Guerry, Burroughs and Burden were suspended and the Company and J. P. Stevens posted a notice advising all employees that the three men had been suspended. The notice read:

"TO ALL EMPLOYEES

It has come to our attention that an investigation is presently being made in our community by law-enforcing officials on a question as to whether some sort of illegal listening device was recently placed in the room of a representative of the Textile Workers AFL-CIO Union at a local motel—and as to whether any of our supervisory employees had any possible involvement in such matter.

We feel that it is our duty to say to you expressly and specifically that if any of our supervisors have taken part in any such occurrence, then it is not something of which we had any knowledge, or which we in any way condone or approve, but of which we strongly disapprove. We have emphasized to our supervisors that while we are opposed to unionization for reasons which we have stated to you—and to which we sincerely adhere—we do not intend, and cannot permit, our cpposition to take the form of any unlawful actions.

In the present instance, therefore, we are seriously concerned to hear reports that the investigation referred to above apparently extends to one or more persons holding supervisory position here. It is obviously for other authorities, and not for us, to determine what decision should be made on such a question. In view of our clear position as stated above, however, we believe that we should as of now suspend such individual or individuals as the law-enforcing officials appear to be investigating—pending some conclusion or decision from their investigation—and this is therefore now being done.

If and when the matter is resolved or cleared up favorably to such individuals—as we certainly trust will be the case—they will of course be returned to their positions without any loss of pay or benefit.

Clyde Moore
General Manager
DELTA NO. 3 PLANT
J. P. Stevens & Co., Inc.

Kelly Traynham
General Manager
DELTA NO. 3 PLANT
J. P. STEVENS & CO., INC."

23. I find that Stevens' Safety Inspector Larry Burroughs and Personnel Director Harold Guerry, arranged for and placed a "modified" telephone instrument, which effectively served as a listening device, in the Wallace Motel room (Room 24) of Union Representative Alfred Motley on January 17, 1973. This device maintained surveillance over Motley and many pro-unionists for two days.

Therefore I find these men in violation of the decree of the Court of Appeals, March 26, 1968 Sec (c), "engaging in surveillance of employee's activity in response to union

organization.'' The Stevens Company and its counsel would not seem to dispute the basis for this find [sic]. The evidence respecting Guerry and Burroughs is overwhelming. Further I find respondent J. P. Stevens & Co., by the action of Safety Inspector Burroughs and Personnel Director Guerry, is also in violation of the decree of September 1, 1967, Sec. (c).

The main issue raised by the Company is whether it should be responsible in a contempt proceeding for the action of its agents. Also raised is the issue whether the posting by the Company a notice of the suspension of the two men, (and another suspect Mr. George Burden) and a general announcement of the suspensions and their circumstances is sufficient to immunize Stevens from being held in contempt.

In a case such as this, the questions must be answered in the negative. First, the eavesdropping activity benefitted no one but the Company, in so far as the eavesdropping advanced by the Company's cause of continual opposition to unionization. The Company had obviously made its opposition to the Union very clear in many ways. It would be quite natural for a Personnel Director and a Safety Inspector (who was in charge of safety in the plant in general, and in plant protection in particular) to think that actions such as they took would be desired by the Company. They had every reason to think that their activity would receive full approval by the Company, unless they were caught. Burroughs and Guerry were motivated by a response to Company policy. This is not to say that Stevens must yield its opposition to unionization but that this opposition is so well known that it can motivate employees to engage in unfair labor practices.

Furthermore, the men who accomplished the eavesdropping were not petty sergeants, such as floor ladies or even departmental supervisors in the production areas. These men were part of "middle management" at a relatively

high level. The Corporation can not so easily disregard the actions of such persons as actions of the Company.

In short, a corporation exists *only* through its agents. Corporate responsibility should be placed on the corporation when relatively high management acts. The test for corporate responsibility for the actions of a person at a reasonably high level of management should not be disregarded simply because there is a thin line of others higher in management who would disown the acts of middle management by acting to dismiss or suspect the malefactors.

24. I find that there is not clear and convincing evidence respecting the involvement of George Burden in the eavesdropping episode. An attempt was made by the Labor Board to establish that Burden had the skill to modify the telephone placed in Room 24. Burden denies that fact. The extent of his skill was never fully demonstrated nor was the detail of his alleged participation in the affair.

III. Cases Presented in the Raleigh, North Carolina Hearing June 4-7, 1974, J. P. Stevens Plants Near Raleigh, North Carolina:

1. I find that according to the uncontradicted testimony of union coordinator, Harold McIver that a continuing organizational union campaign among several J. P. Stevens plants in Roanoke Rapids began in August 1972 and continued in various forms through to the full scale organizing drive in the Spring of 1973 [T. 18 *et seq.*].

2. *James W. Palmer,* an employee at J. P. Stevens testified that in April 1973 he had a conversation with a management representative, Ray Mabry, regarding union solicitation. According to Mr. Palmer's testimony, the conversation took place in Mr. Mabry's office where Mabry was joined by his assistant, David Moody and the floor-lady, Judy Wheeler. Mabry informed Palmer that Mabry had heard of Palmer's doing some union solicitation on the

floor in the work area and that such solicitation was against Company policy and indicated that it should be terminated. [T. 22 (Palmer)].

An hour or so later, Mabry approached Palmer and asked him if he understood what Mabry had said "about soliciting." Palmer asked whether soliciting included talking about the Union. Mabry responded, it meant any kind of soliciting done on Company time (not in a canteen or a break area). [T. 23-24 (Palmer)].

During Palmer's next break in the canteen, he noticed a floor-lady (a management representative) in the canteen. In response to a question from Palmer, she told him that Mr. Mabry had told her to start taking her breaks at that time and in that place. According to Palmer, she was there during every break that Palmer took for a week and a half. She positioned herself in such a way that she could see Palmer at all times. Thereafter, a supervisory employee was also taking a break in the canteen when the employees were there.

There were no rules prohibiting employees soliciting while at work [T. 398 (Mabry)]. There had been solicitation while at work (for Avon Products and Tupperware as well as for a fishing contest.) Palmer had been solicited by a supervisor, Dave Moody. There were also solicitations for the buying of Christmas presents for certain supervisory employees.

Under cross examination Palmer admitted that he had done a good deal of solicitation during work time. Solicitation conversations usually lasted a minute and a half. Palmer admitted to having literature in his possession on the floor but he testified that he distributed the literature only in the canteen area. The supply of literature was in a bag on Palmer's machine. Palmer admitted to soliciting eight people in his working area. Palmer would approach each one and ask him if he had signed a card for the Union.

Palmer asserted that generally when he talked to people at work, he did not interrupt the flow of their production. He was a service man and quite often the persons he talked to were "on machine time." The truth is his work took him to many work stations.

3. I find that a rule prohibiting solicitation on work time was applied to Palmer because of his Union organizing activities. There had been no such general rule which was published or widely understood by the employees. The effect was for him to cease organizing efforts on work time. The Company's action violated the decree of the Court of Appeals of March 26, 1968, section (k).

I find no clear and convincing evidence that Ms. Melvin Reed was conducting a surveillance on Palmer in the canteen at breaktime.

3. *Chrystal Lee Jordan,* a Stevens employee in the Roanoke Fabricating Plant, was an active union organizer in the spring campaign of 1973. She signed a union card in April and immediately thereafter joined the In-Plant Organizing Committee and also distributed leaflets and organizing cards. She wore a union button while at work in the Plant and "talked union talk" in the canteen before work [T. 43-44 (Jordan)].

On April 29, 1973 she had a conversation with Mr. Eugene Taylor, a supervisory employee from a department different from that in which Jordan worked. She testified that Taylor said, "I heard you were at the union meeting yesterday" and "a lot of people think that if the union comes in, they will get higher wages." Jordan's testimony continued: [T. 45 (Jordan)].

> "And I said, 'well, that wasn't what I was interested in, the higher wages, as much as I was people getting better working conditions and better retirement plan.'"

"And I said, 'I don't want to talk to you about this.' "

"He said, 'I can talk to you about this, we can talk about it.' "

"I said, 'No, Eugene, I don't want to talk to you about it because you are for the company and I am for the union, and nothing that you say will make me change my mind, and nothing I say will make you change your mind, and I would rather not talk about it.' "

"And so he walked off."

4. Taylor denied the thrust of the conversation. He stated that she called him over to her place of work and Jordan remarked, "I didn't see you at the union meeting." According to Taylor's testimony he merely replied that he knew nothing of the meeting. [T. 422 (Taylor)].

5. Because I find Jordan's testimony to be clear and convincing I find that Taylor violated the injunction (Sec. (d), Court of Appeals decree of March 26, 1968.) Taylor's denial of Jordan's testimony cannot be believed. Jordan's demeanor as a witness, throughout the hearings, was one of honesty and candor. It is highly unlikely that she would call a supervisory employee and taunt him with failure to attend a union meeting when it would not have been proper for him to attend. Furthermore, his failure to recall any conversations with other supervisory employees in respect to current union activities surely the most important subject among supervisory employees in the plant makes it impossible to be impressed with his candor. [T. 423-426 (Taylor)].

6. Given the openly expressed union sympathies of Chrystal Lee Jordan [T. 40-43 (Jordan)], it is certain that many supervisory employees of Stevens were aware of her views, her activities and her position of Union leadership. It is the [*sic*] light of that awareness that the events set forth below must be judged.

Both Union and the Company used the bulletin board in the plant. On May 29, 1973 Jordan went to the bulletin board on her work-break to copy a company letter which was designed to present anti-union arguments. The letter said, in part, "ask your union representative certain things." Presumably these questions would be difficult for the representative to answer effectively. Jordan wished to copy in order to make the inquiries at the next union meeting.

Supervisor David Moody told her she could not copy from the bulletin board [T. 47 (Jordan)] Jordan testified that if she made a copy she would be fired [T. 48 (Jordan)]. Whereupon Jordan ceased copying and departed. Moody denied that part of the conversation in which he allegedly threatened Jordan with discharge [T. 557 (Moody)]. The evidence respecting the threat of discharge does not meet the demanding standard of clear and convincing proof. Yet Jordan was clearly told in an authoritative manner not to copy. After all she did stop the copying because of Moody's intervention.

6a. I find that Moody did interfere with rights to "assist . . . [the union] or any other labor organization to bargain collectively . . ." (Sec. k of the decree of March 26, 1968).

After the interchange with Moody, Jordan consulted her union representative [T. 58 (Jordan)] who told her she had a "constitutional right" to copy off the bulletin board.

7. On May 30, 1973 Ms. Jordan took her first work-break. She went to a new canteen which, as she understood the matter, she was permitted, but not commanded to us [*sic*] [T. 55 (Jordan)]. The new canteen was dirty, with no air conditioning or water fountain, she decided to use the old canteen in which she customarily had taken her breaks. When she returned to her work, she was told that Ray Mabry, a supervisor, wished to see her in his office. He stated (Ms. Melvin Reed, another supervisor was with him) that Jordan had been instructed to use the new can-

teen. Jordan told of her understanding that a choice of canteen was permissible and of the unsatisfactory conditions in the new canteen. While Mabry and Jordan parted amicably enough, it must be remembered that being called to the office is not an event without distress for union-organizing employees. Persons passing the door with a window could "see who was in the office." [T. 56 (Jordan)].

8. After the session with Mabry and Reed, Jordan called her union representative on a newly installed pay telephone to be used by employees. The telephone conversation which took place during work-time and without permission was the cause of another confrontation between Reed and Jordan. Mabry and Melvin Reed approached her and asked whether she had not been told not to use the telephone on work time without permission. Jordan replied in the negative whereupon Melvin Reed, who began to say something, Mabry said, "let it go, Melvin, let it go." [T. 50 (Jordan)].

On the evening of May 30, 1973, with the advice of the union representative respecting her rights in mind, Ms. Jordan decided to copy the letter she had attempted to copy the day before. The attempt occurred at the supper break, a special occasion on May 30 because a special "safety supper" was being catered for the employees. While Jordan was copying, supervisor Dave Moody said "Chrystal, I told you last night that you can't copy this letter off the bulletin board." Moody left and another supervisor, James Alston, approached Jordan and told her she could not copy from the board. She argued that she had a right to copy. Alston asked her to come to the office and talk about it. Jordan replied "it is my break time." She wanted to copy the letter and go to the special supper. Alston left and Mr. Mason Lee (the head of the Fabricating Department) arrived and told her that "you are not going to copy this letter." Jordan said that she would finish copying the letter, have her supper and then go wherever she wanted. Mason Lee replied:

> "And he said, "you are going to leave this plant."
> I said, "What do you mean by leave?"
>
> He said, "I am going to call the police in here to come and take you out."

She refused to comply again and Mr. Lee left.

9. After supper Jordan was called to a meeting in Mr. Lee's office. Lee was present along with Dave Moody, Melvin Reed, James Alston, Ray Mabry, Tommie Gardner and Mason Lee. It is useful to set forth Jordan's version of the interview which followed:

> "I was seated, Mr. Lee asked me; he asked me; he said, "Chrystal, what have you got to say about what you have done and why you haven't done any work since 7:00 o'clock?"
>
> And I said, "Mr. Lee, sir," I said, "before I say anything," I said, "I would like to know, I had a piece of paper, I would like to know each of your names, and how to spell them."
>
> He started to spell his name, and then he said, "I don't have to do this;" and he instructed the rest of them in there that they didn't have to tell me either.
>
> And then he asked me again, "What did I have to say about what I had done?"
>
> And I told him, I put my hands up to my ears, and I told him that I was not going to say anything because all of those in there were for the company, and I was in there by myself, and no matter what I said, I would be wrong anyway."
>
> Mr. Lee asked me "Had I not been instructed to use the pay phone except on my break time and with permission:" and I told him, "No, sir, that I had used the phone on numerous occasions."
>
> He said that he would have to ask me to leave.

And I said, "Mr. Lee, what do you mean by leave?"

I said, "you said for me to leave when I was out at the bulletin board"; and I said, "so, will you please define the word "leave"?"

and he said, "Crystal, your job here at Fabricating Department is terminated."

Crystal Lee Jordan was discharged. The events respect the use of the new canteen, the use of the telephone, the copying from the bulletin board and the meeting in Mr. Lee's office are not the subject of substantial dispute. The issue is whether the facts establish a job termination designed to discourage union membership and participation in Union activities.

The special instructions respecting the use of the new canteen, given to Jordan personally, together with the meeting in Mabry's office disturbed her sufficiently so that she told her union representative about it on the telephone. No one else was given a special reprimand respecting the use of the new pay telephone. She was given warnings about copying from the bulletin board when there was no published or generally understood company rule regarding the matter. Events such as these are not likely to produce a discharge from employment but a great deal of worry and concern for an employee active in union organizing.

Her shrill conduct in the meeting in Mr. Lee's office after her refusal to go to that office immediately after she was requested because of the second copying incident might well be a ground for being fired. But that episode must be considered in the light of the other events which singled her out, an important leader in the union campaign, for special warnings and criticism from management, in Mr. Lee's office, where she, alone, confronted six management representatives her fears of company retaliation overwhelmed her. Her outburst was, in fact, brought about by company harrassment.

10. I find she was discharged from employment in violation of Sec. (a) of the decree of March 26, 1968 as well as Sec. (k).

11. According to *John L. Williams,* [T. 92-98 (Williams)], Plant Supervisor James Cranford asked Williams with whom he had walked across the yard with the night before. Williams said he did not know. Cranford left and went to the office of Overseer H. B. Foster. Williams testified that Cranford warned against passing out leaflets and said some degrading things about unions. Cranford denied this conversation. [T. 417 (Cranford)]. There is only the contradictory testimony from the two persons to the conversation.

12. Because it is impossible by clear and convincing evidence to resolve the controversy in this case respecting the second conversation which contained the warning, I find that no violation of the Circuit Court's injunction has been established.

13. *Linda Williams* testified that she had a conversation with Mr. Vernon Payne, supervisor, on May 9, 1973 about the Union. No one else was present. Mr. Payne, according to the testimony, said that he had heard she was interrogating workers and talking about the Union in the canteen [T. 104 (L. Williams)]. She further testified that he told her that she could not talk about the Union on Company property whether on "break in or out of the canteen." Further, he allegedly said that it made "no sense" to wear a union card "but that is just my opinion." [T. 105 (L. Williams)]. She also told of talking very favorably and enthusiastically regarding the Union in the canteen during this time.

14. Mr. Vernon Payne denied that the conversation between himself and Ms. Williams had been of the sort which Ms. Williams alleges. In his testimony he stated two employees, Mr. Marshall Payne and Kirby Shearing, had complained about Ms. Williams "pressure tactics" [T. 428

(Payne)]. This complaint, according to Vernon Payne, led him to speak to Ms. Williams. Actually Marshall Payne had merely complained that Williams' conduct was "bothering him," another Supervisor Mr. Morris Porch was asked by Marshall Payne and Kirby Shearing to stop Linda and a friend from harrassing or "bothering" them [T. 440 (Morris Porch)].

15. By clear and convincing evidence it is established that Linda Williams and Vernon Payne had a conversation about Union activity within the plant. It is the tenor of that conversation that is questioned. Either Linda Williams was told that she could not talk about the union on company time [See T. 105 (L. Williams)] or he warned her not to "pressure" employees in the canteen. No other possibility appears in the evidence according to the testimony. It seems that the essential complaint by employees Marshall Payne and Kirby Shearing was that Linda was "bothering" them.

Vernon Payne took no steps to establish exactly what conduct Ms. Williams had actually engaged in but described it in terms indicating Linda to be seriously at fault in her behavior. Either version of the conversation would operate to discourage union activity.

16. I find in either event, Vernon Payne engaged in conduct, according to clear and convincing evidence, that violates Sec. (k) of the Circuit Court injunction of March 26, 1968 by interfering with employees in the exercise of the right to organize or to assist the Union.

17. *Sadie Lewis,* a Stevens employee testified that she had a conversation with Robert "Pete" Rawlings, a Stevens supervisor. She was wearing a union button in the canteen and Rawlings, using her maiden name, said "Harrelson, why are you wearing that button?" She asked whether there was "something wrong with it" and he replied "yes, I though Charlie . . . (her father) raised smarter children than that." She replied "I think I am being very smart."

According to Lewis, Rawlings replied that he "could change that" if she worked under his supervision [T. 118-120 (Lewis)].

Ms. Lewis report of the conversation with Rawlings was corroborated, in part, by Mr. Gary Boyd, another employee of Stevens. Boyd partially over-heard the Lewis-Rawlings conversation in that he heard Rawlings ask her (referring to the union button) "What have you got on there?" Boyd then reported that Rawlings started to talk "about her family." [T. 623 (Boyd)].

Rawlings denied he talked with Lewis about the union in any way. He testified that their conversation was about getting a clerical job at Stevens for her sister. Rawlings hired the clerical personnel. [T. 447-6, 447-8 (Rawlings)].

18. I find that Rawlings violated the injunction of March 26, 1968 of the Circuit Court of Appeals in that, he, by his statements to Lewis, violated Sec. (e) and (k). I believe Ms. Lewis accurately reported the conversation with Rawlings. Her story was partially corroborated by Boyd. Further Rawlings himself said that he did not think that she would "make up a story" against him. That would seem to be true, because of the friendship between Rawlings and Ms. Lewis' father.

19. *Cheryl Ann Wasmund,* a Stevens employee, who was a union member and wore a union button, attempted in June, 1973 to copy something (a union poster) from the bulletin board in the plant. It was the same board that Chrystal Jordan had copied from.

Wasmund was told by Supervisor Ray Mabry that company policy did not permit copying from the board. His view was supported by another Supervisor James Alston. At that point Wasmund left the bulletin board. [T. 252-55 (Wasmund)].

On July 13, 1973, Wasmund began copying another item on the bulletin board. Mabry again approached the board

and reminded Wasmund that she had been told not to copy. She replied that it was her constitutional right. Mabry requested her to come to the office but she refused and said that she would be at the office when she completed her copying.

When Wasmund finished copying she went to Mabry's office. He said that he had told her not to copy from the board and they were going to ask her to leave the plant for that day. [T. 258 (Wasmund)]. They would be back with her at the beginning of the week [T. 259 (Wasmund)]. She inquired why she should be back. She testified that his response was, to let you know if you still have your job.

This incident happened on Friday and on Tuesday she received a message asking her to return. She was told by Mabry that she had been "written up" for failing to go to the office when asked. Wasmund refused to sign the personnel action form which would have indicated her consent and her agreement with the action. She stated that she had not refused to go to the office. [T. 261 (Wasmund)]. Wasmund was subsequently paid for two hours reporting pay on Friday, and two hours reporting pay on Monday. She was also put back to work without signing the "write up".

20. I find that plant supervisor Ray Mabry suspended employee Wasmund to discourage her from encouraging in union activities in violation of the Court of Appeals decree March 26, 1968, Sec. k. This is another case in which an open and identifiable supporter of the union was told that copying could not be done from the bulletin board. The effect was to discourage the union activities of Wasmund and others in the plant. Mabry also violated the same section of the injunction when he sent her home for two days for refusing to come to the office. Her refusal to come to the office at the time she was requested was a direct action of the company management's attempt to enforce a non-published and not generally understood rule against copying. The incidents cannot be separated.

It is interesting to note that the rule against copying has been abandoned by the Company because, as Superintendent Tom Gardner said: "We were being challenged on this, and since this was such a small thing we did not get into a fight about it . . . we would just drop it." [T. 374 (Gardner)].

21. Employee, *Tinsley Hockaday* left the Stevens' Plant early on the Friday prior to October 13, 1973. Hockaday was a member of the union who wore a union button in the plant, and hence was identified by the management as a union supporter.

Hockaday admitted that he had left early on a certain Friday [T. 270 (Hockaday)]. His explanation for leaving early was that he wished to make contact with his sister and borrow her car. On that Friday, however, he did pass out union leaflets when he left work, but, according to his testimony, not until the whistle had blown, signaling the end of his shift [T. 270 (Hockaday), T. 606-10 (Jordan)].

Overseer Supervisor Willie Hinton spoke to Hockaday, respecting his leaving early. Supervisor Willie Hinton testified that he inquired of Hockaday for the reason of leaving early on the Friday in question. Hinton had some difficulty recalling the event because there had been several occasions of talking with him about leaving early. Hinton stated to Hockaday that he had received word that Hockaday had left early to pass out union literature. Hinton ultimately called Hockaday to his office [T. 144-45 (Hinton)]. In the office interview, Hinton inquired about leaving early and spoke to Hockaday about his problem in getting enough "production." During the conversation, Hockaday stated that he would like his wife to get a job [T. 444-45 (Hinton)].

Hockaday also testified that Hinton had stated that he would feel a lot better about him if "he didn't see that on me"—obviously referring to his union button. Hinton denied any talk at all about the union buttons. On the day

he left the plant, he had left a considerable time (20-30 minutes) before the end of his shift. [T. 277 (Hockaday)]. Hinton had ample reason to talk to Hockaday in relation to the breach of a well understood rule that employees may not leave 20-30 minutes early without permission.

22. I find that, clear and convincing evidence is not to be found in the record which indicates that Hockaday was in any way threatened or influenced or reprimanded for his union activity. It is not possible to find with the required standard of evidence that the injunction had been violated by Overseer Hinton in this case.

23. In September, *Edward R. Daniels,* a Stevens' employee, was according to his testimony, approached by Overseer, Fred Ethridge, while Daniels was wearing two union buttons [T. 285-286 (Daniels)]. According to Daniels, the Overseer touched the buttons with his pencil and asked what they were. Daniels told him they were union buttons, and, again according to Daniels, Ethridge stated, "I would take that off if I were you." [T. 289 (Daniels)].

According to Ethridge's testimony, Daniels had held the union button out and asked how Ethridge liked it. Ethridge responded that it "looked very nice" [T. 447-29, 447-30 (Ethridge)].

I find that these actions by Overseer Ethridge did not violate the Circuit Court's injunction given the standard of clear and convincing evidence. One may believe that Ethridge's testimony was "simply not plausible" and that there was a general attitude in the company hostile to employee Daniels without holding the opinion that the proper evidentiary standard for a contempt proceeding has been met.

24. *Willie Floyd Williams* a janitor for J. P. Stevens, was taking his break near a toilet room and giving out union leaflets. He wore a union button. A supervisor, Mr. Jimmy Martin, approached him and told him he could not pass out

leaflets without permission [T. 292-3 (Williams)]. He was told, according to his testimony that "by the rules he had to get permission to pass out" leaflets, presumably at any time. Actually no such rule existed. An employee can pass out leaflets on break-time without permission [T. 293 (Williams)]. Martin told him to stop but Williams continued.

There is no serious disagreement between the testimony of Martin [T. 447-19 and following (Martin)] and that of Williams. Martin did say that he did not believe that Williams was on a break even though he admits that Williams said he had been told, "he could do anything he wanted to do while he was on a break." I find Martin's belief not to be creditable.

25. I find, by a standard of clear and convincing evidence, that Martin applied a non-existent rule in his direction to Williams that he stop passing out leaflets. This conduct is in violation of the Circuit Court's decree of March 26, 1968 Sec. (k) as an interference with Williams right to assist in union organization.

26. *Gary Arthur and Associates,* an out-of-house professional group, was hired by Stevens to conduct a personnel survey at two Stevens plants in Roanoke Rapids. The employees were not told that they were required to participate. On the other hand, they were not told of their freedom to refuse to answer the questionnaire or any questions asked. [T. 107-111 (L. Williams)], [T. 335-339 (M. Gardner)].

The employees were required to disclose their department, sex, shift, length of service and immediate superior. Included in the survey was Question 41. "Do you think a union would help or hurt the employees of this Company?"

27. I find that the administration of this questionnaire was a violation of the injunction of March 26, 1968 Section (c) in that it created the impression of surveillance because the survey document was filled out in rooms under the instructions of another employee.

I find further that the results of the questionnaires were a kind of surveillance. With information supplied the Company by Gary Arthur and Associates, it could ascertain union strengths and weaknesses within different departments of its plants. [See Roanoke hearing, Exhibit 12]. Such a possibility, indeed, *fact,* would create fear and curtail union activity in the Roanoke plants [*sic*].

There is no dispute about the facts. Their implications are clear and convincing for anyone to contemplate.

28. On May 18, 1973, the Company posted on the bulletin boards in its Roanoke Rapids plants a notice concerning the results of the survey which read in part:

> "It is not practical or appropriate to specify in detail the answers to the various items in the questionnaire. But we understand that the Union—which started its campaign here long after this survey had been planned and arranged—is already insisting on knowing the answer to one of the questions that was set out in the printed form. That question asked for opinion—unsigned as on all other questions—as to whether a Union would or would not be good for employees of the Company.
>
> We believe the Union will not be pleased with the result on that question. In only one plant was there a majority response favorable to the Union. And it is to be remembered that the survey was conducted in only three plants—and that there are still four other, or a total of seven, Stevens plants here in Roanoke Rapids —and that there is a great deal of information unfavorable to the Union and to its campaign which had not in any way been brought out at the time of this survey."

This notice distorts the results of the survey [See the Roanoke Board Exhibits 10, 11, 12 & respondent's Exhibit 1]. In two of the Roanoke plants more than 50% of non-

supervisory employees answered Question 41 saying that a union would "help." Only in the Patterson plant did the plurality respond that a union would "hurt." The Company's statement about the results of the questionnaire is reasonably accurate if supervisory personnel are added.

29. I find by misrepresentation in the eyes of the average non-supervisory employee, the Company violated the Circuit Court decree of March 26, 1968 Sec. k, which prohibits interference with the employee's right to self organization.

30. *Joseph Williams* an employee in a Stevens plant in the Roanoke Rapids area. He was a well known, enthusiastic union member who wore a union button, signed a union authorization card, and attended all union meetings. He passed out union cards in the canteen and outside a door leading from the second floor, downstairs in the Plant. He believed it was within company policy if he solicited on break time and after work. [T. 300-3 (Williams)]. Supervisor Raymond Thompson, in April, 1973, spoke to him about passing out cards. There was conversation in Thompson's office in the presence of Jasper Daniels, who functioned as a supervisory employee from time to time when regular supervisors were absent. Raymond Thompson told Williams that it is against company policy to pass out leaflets whether they were working or not. Indeed, Williams testified that he was told that he could not pass out leaflets outside the gates because that too, is company property. If he kept passing them out, he would be "subject to be discharged." Nevertheless, Williams insisted that when he was "on break and not working, he would pass them out." [T. 300-4 (Williams)].

At that point, Daniels and Thompson left the office. Thompson returned and said that his supervisor, Mr. Hinton, wanted him to come back tomorrow and see him. Williams returned the next day to see Hinton, but he was tied up and asked him to return the following day. He was [*sic*] into Hinton's office and found Hinton, Raymond Thompson,

and Mr. Connell, all supervisory personnel. He testified that Hinton asked him whether he knew of the company policy against talking about the union and passing out leaflets. [T. 300-7 (Williams)] He refused but was told that if he came back to work, he would have to abide by the company's rules. He returned to work but continued to pass out leaflets and cards.

31. I find that Joseph Williams was suspended because of his unwillingness to agree that he would abide by the alleged company rule articulated by Raymond Thompson against all passing out of union leaflets at the plant. Actually it does not seem clear that Thompson meant to announce exactly that rule or whether he meant to say that Williams may not pass out leaflets and cards during work time as opposed to break time. It is certain that Thompson failed to clarify this point. He did forbid some passing out of literature and Williams understood the "rule" in its broadest sense. Part of the difficulty lies in the unpublished form of the company "policies". Section (k) of the decree of the Circuit Court, March 26, 1973 was violated. In my view section (k) is concerned with the objective effect of company actions as well as ultimate purposes. In any event the actions of Thompson and Hinton were directed at discouraging unionization.

32. It is alleged that Overseer Hinton reprimanded Williams because of leafletting on non-work time in non-work areas and forbade him to talk to the union (amended motion T, A, 7). Hinton did reprimand Williams but for neglecting his work and interfering with other employees. The reprimand was given in those words. It is a reasonable reprimand given for failing to observe a reasonable requirement and not one which represents a new "rule" of which no one ever heard. All employees understand that such employee conduct is required in an industrial plant.

33. I find here no violation of the Circuit Court's decree of March 26, 1968.

34. Williams tended 30 spinning frames. Each frame contained at least 252 spindles; each spindle held one bobbin [T. 305 (Williams)]. When all of the bobbins on a frame filled up with yarn, Williams would remove the full bobbins and replace them with empty ones. This process is called doffing. On occasion, excess yarn would build up under a bobbin on a spindle. When this occurred, a new bobbin would not seat properly on the spindle to receive new yarn unless the excess yarn on the spindle was either tamped down or removed [T. 300-17 (Williams), T. 334-335 (Garner), T. 342, 344 (Hockaday)]. Cleaning a spindle entailed removing the excess yarn accumulated thereon. Cleaning a frame entailed cleaning all of the 252 or more spindles on the frame. Cleaning frames would necessarily lower a differ's production [T. 306, 307-308 (Williams), 513 (Minggia)].

Shortly after Joseph Williams returned to work, on or about April 21, 1973, his work was made more burdensome. His frames were speeded up [T. 300-11 (Williams)] and adjusted so that they would run dirtier [T. 331-332 (Garner)], and he was continually directed to clean them [T. 300-15 (Williams)]. During one of several conversations regarding Williams' duty to clean the frames, Hinton again asked Williams if he was still passing out union leaflets [T. 300-15 (Williams)].

Until his suspension, Williams, like other doffers, had not been assigned specific frames to clean [T. 300-17 (Williams)], [T. 340-341 (Hockaday)]. After his suspension, however, Williams was told that he had specific frames—which amounted to one-third of the number he doffed—to clean once each week [T. 300-23 (Williams)]. Customarily, doffers were not required to clean frames if they had a frame "down" [T. 300-51 (Williams), T. 513 (Minggia)], and they usually cleaned spindles only when the bobbin would not seat [T. 300-23, 300-42 (Williams), T. 333-334 (Garner)]. When he came on shift on May 17, Williams

had several frames down and he always had at least one down throughout that day's shift [T. 300-16, (Williams)]. Despite this, Supervisor Thompson directed him to clean his total required frames that shift [T. 300-16 (Williams)], 459 (Thompson) compare 512-513 (Minggia)].

After first agreeing to clean his frames, Williams realized Thompson was acting in a discriminating fashion [T. 307 (Williams)]. Thereupon Williams returned the "hack saw" blade Thompson had given him to use in cleaning the frames and told Thompson he could not clean the frames [T. 300-20 (Williams)]. Thompson remarked that Williams would be discharged, and Williams asked why he was the only doffer required to continuously clean frames [T. 300-20, 300-21 (Williams)]. Subsequently, Supervisor Hinton discharged Joseph Williams for not abiding by alleged Company policy [T. 300-22 (Williams)].

35. I find that Overseer Hinton and Supervisor Thompson made the working conditions of employee Joseph Williams more burdensome and then when he protested, discharged Williams, all to discourage the union activities and union membership of this prominent person in the organizing effort.

This action is in violation of the Circuit Court's decree of March 26, 1968 Sec. (a). Joseph Williams testimony is substantially unrebutted in its essentials by the company witnesses.

Conclusions of Law

By engaging in interference, restraint, and coercion of employees in the exercise of their rights as guaranteed by Section 7 of the N.L.R.B. Act, respondent Company has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act and in violation of the decrees of September 1, 1967 and March 26, 1968 and the contempt adjudication of the Court of Appeals of September 13, 1972.

By discriminating in regard to terms and conditions of employment of, and ultimately reprimanding, suspending or discharging, employees Crystal Lee Jordan, Joseph Williams, Cheryl Wasmund, Jimmy Grooms and Moses Covington, respondent Company has discouraged membership in the Union and engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act and the aforesaid decrees of the Court of Appeals.

By acting in concert and participation with respondent Company in the commission of the unfair labor practices referred to above, with notice and knowledge of the underlying decrees, the following Stevens employees were and are in civil contempt of the decrees of the Court of Appeals dated September 1, 1967 and March 26, 1968 and the Order of September 13, 1972:

1. Mack Renegar, Max Shaver, Allen Shew, Junior Anderson and Ed Mitchum for their respective actions referred to in item 7 of page 4 of the Report.

2. Ernest Meadows and Howard Sellers for their actions described in item 1 pages 7-9 of the Report.

3. Chester Martin for conduct described in item 3-5 on pages 9 and 10 of the Report.

4. John Thomas for conduct described in items 6-10 on pages 11 and 12 of the Report.

5. Troy Quick for conduct described in item 16 on pages 15 and 16 of the Report.

6. Harold Guerry and Larry Burroughs for conduct described in items 18, 19, 20, 21, 23 and 23 [*sic*] on pages 17-22 of the Report.

7. Ray Mabry for conduct described in items 2, 3, 7, 8, 19 and 20 on pages 23, 24, 27, 28, 32 and 34 of the Report.

8. Eugene Taylor for conduct described in items 3a, 4, and 5 on pages 25 and 26 of the Report.

9. Dave Moody for conduct described in items 6 and 6a, on page 26 and 27 of the Report.

10. Mason Lee for conduct describe in items 8 and 9 on pages 27-29 of the Report.

11. Tommy Gardner for conduct describe in item 9 on page 28 of the Report.

12. James Alston for conduct described in item 8 on page 27 and 28 of the Report.

13. Vernon Payne for conduct described in items 13, 14 and 15 on page 30 and 31 of the Report.

14. William Hinton for conduct described in items 21, 22, 34 and 35 on pages 34, 35, 40 and 41 of the Report.

15. Jimmy Martin for conduct described in items 24 and 25 on page 36 of the Report.

16. Raymond Thompson for conduct described in items 30-33 on pages 38 and 39 of the Report.

By engaging in such conduct, the J. P. Stevens Company, Mack Renegar, Max Shaver, Allen Shew, Junior Anderson, Ed Mitchum, Ernest Meadows, Howard Sellers, Chester Martin, John Thomas, Troy Quick, Harold Guerry, Larry Burroughs, Ray Mabry, Eugene Taylor, Dave Moody, Mason Lee, Tommy Gardner, James Alston, Vernon Payne, William Hinton, Jimmy Martin and Raymond Thompson were and are in civil contempt of the decrees of the Court of Appeals dated September 1, 1967, March 26, 1968, and the order of September 13, 1972.

ORDER

1. On the basis of the foregoing, the Special Master recommends that the J. P. Stevens Company, Mack Renegar, Max Shaver, Allen Shew, Junior Anderson, Ed Mitchum, Ernest Meadows, Howard Sellers, Chester Martin, John Thomas, Troy Quick, Harold Guerry, Lary Burroughs,

Ray Mabry, Eugene Taylor, Dave Moody, Mason Lee, Tommy Gardner, James Alston, Vernon Payne, William Hinton, Jimmy Martin and Raymond Thompson be adjudged in civil contempt of the decrees of the Court of Appeals dated September 1, 1967, March 26, 1968, and the order of September 13, 1972.

2. It is ordered and adjudged that the J. P. Stevens & Company Inc. and those individuals named in paragraph 1 above shall purge themselves of the contempt citation by:

A. Complying in full with the decrees of the Court of Appeals dated September 1, 1967, March 26, 1968 and the order of September 13, 1972.

B. Posting in conspicuous places in all J. P. Stevens Company plants in the United States, in the places where notices to employees are customarily posted, a copy of this adjudication. Alongside shall be placed a Notice in the form provided by the Board which shall state that the respondents have been adjudicated in contempt of the Court's orders and that they will undertake to comply with all of the purgation ordered by the Court. The adjudication and Notice shall be posted for 60 consecutive days and the copies shall be maintained in clearly legible condition throughout such posting period and respondents shall assure that they are not altered, defaced, or covered by other material. Said Notice shall be signed by the President of J. P. Stevens and Company.

C. Mailing to the home of each employee of J. P. Stevens, Co. whose plant was involved in the contempt hearing a copy of this order and of the aforesaid Notice and providing the Board's Regional Director with proof of such mailing.

D. Reimbursing the Board for its costs and expenses, including counsel fees and salaries incurred in the investigation, preparation and presentation of these proceedings

before the Special Master of this Court. Said amounts, unless agreed to by the parties, shall be fixed by further order of the Court upon submission by the Board of a verified statement of such costs and expenses. The Company is also directed to pay all Court costs, including all costs relative to the Special Master.

E. Formulating, to the greatest extent practicable, the rules which employees must follow in the plants involved in the contempt hearing. A plan for formulating acceptable rules must be established and must provide for involving plant employees in the process of formulation. The rules should be written and widely published.

F. Establishing a continuing program for the proper education of J. P. Stevens management personnel in the area of the rights of union organizers and plant employees who wish to organize or who wish to join a union. The program shall be set up with the consultation of a representative of the National Labor Relations Board. It shall be established within a period of one year.

Respectfully submitted

/s/ MONRAD G. PAULSEN
Monrad G. Paulsen
Special Master
September 28, 1976

No. 77-726

Supreme Court, U.S.
FILED
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In the Supreme Court of the United States

OCTOBER TERM, 1977

J.P. STEVENS & CO., ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-726

J.P. STEVENS & CO., INC., ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-30a), adjudging petitioners in civil contempt of a previous contempt decree and two enforcement decrees of that court, is reported at 563 F. 2d 8. The opinion of the court of appeals in the earlier contempt proceeding is reported at 464 F. 2d 1326, certiorari denied, 410 U.S. 926. The opinions in the two enforcement cases are reported at 380 F. 2d 292, certiorari denied, 389 U.S. 1005, and 388 F. 2d 896, certiorari denied, 393 U.S. 836. The underlying Board decisions are reported at 157 NLRB 869 and 163 NLRB 217.

JURISDICTION

The judgment of the court of appeals (Pet. App. 31a-42a) was entered on October 19, 1977. The petition for a writ of certiorari was filed on November 21, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the provision of the court of appeals' decree granting access by union representatives to non-working areas of Company plants to meet with employees during their non-working time is appropriate in this civil contempt proceeding to remedy effects of the conduct found to be in contempt of the court's earlier decrees.

2. Whether the provisions of the court's decree are sufficiently descriptive to give petitioners adequate notice of required and proscribed conduct.

3. Whether the remedies provided in the court's decree are proportionate to the Company's violations of the earlier court decrees.

4. Whether clear and convincing evidence supports the court's findings that petitioners failed to comply with, and thus were in contempt of, the court's prior decrees.

STATUTE INVOLVED

Relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at Pet. 3.

STATEMENT

A. THE UNDERLYING DECREES AND THE FIRST CONTEMPT ADJUDICATION

In September 1967, and March 1968, the court of appeals issued decisions[1] sustaining the Board's findings that J.P. Stevens & Co., Inc. (the "Company") had committed "massive violations" of Section 8(a)(1), (3), and (4) of the National Labor Relations Act (Pet. App. 2a).[2] The court's decrees in those two cases[3] required the

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[1] *J.P. Stevens* v. *National Labor Relations Board (Stevens I)*, 380 F. 2d 292 (C.A. 2), certiorari denied, 389 U.S. 1005; *Textile Workers Union of America* v. *National Labor Relations Board (Stevens II)*, 388 F. 2d 896 (C.A. 2), certiorari denied *sub nom. J.P. Stevens & Co.* v. *National Labor Relations Board*, 393 U.S. 836.

[2] The unlawful conduct included the discharge of 71 employees because of union activities at 20 of the Company's 43 plants in North and South Carolina. 380 F. 2d at 295.

[3] The two cases were the first of eighteen unfair labor practice or contempt proceedings involving the Company to date. See *J.P. Stevens (Stevens III)*, 167 NLRB 266, enforced with modifications, 406 F. 2d 1017 (C.A. 4); *J.P. Stevens (Stevens IV)*, 167 NLRB 258, enforced with modifications, 406 F. 2d 1017 (C.A. 4); *J.P. Stevens (Dublin-Nathaniel Plants) (Stevens V)*, 171 NLRB 1202, enforced, 417 F. 2d 533 (C.A. 5); *The Black Hawk Corp. (Stevens VI)*, 177 NLRB 944, enforcement granted in part and denied in part, 431 F. 2d 900 (C.A. 4); *J.P. Stevens (Gulistan Division) (Stevens VII)*, 179 NLRB 254, enforced, 441 F. 2d 514 (C.A. 5), certiorari denied, 404 U.S. 830; *J.P. Stevens (Stevens VIII)*, 181 NLRB 666, enforcement granted in part and denied in part, 449 F. 2d 595 (C.A. 4); *J.P. Stevens (Stevens IX)*, 183 NLRB 25, enforced, 461 F. 2d 490 (C.A. 4); *The Black Hawk Corp. (Stevens X)*, 183 NLRB 267; *J.P. Stevens (Gulistan Division) (Stevens XI)*, 186 NLRB 180, enforced, 455 F. 2d 607 (C.A. 5); *J.P. Stevens (Stevens XII)*, 190 NLRB 751, remanded on other grounds, 475 F. 2d 973 (C.A. D.C.), on remand, 205 NLRB 1032; *National Labor Relations Board* v. *J.P. Stevens (Stevens XIII)*, 464 F. 2d 1326 (C.A. 2), certiorari denied, 410 U.S. 926 (on contempt), remedial order reported at 81 LRRM 2285; *J.P. Stevens*

Company, *inter alia*, to cease and desist from discharging or otherwise discriminating against its employees to discourage membership in the Textile Workers Union of America, AFL-CIO (the "Union") or any other labor organization; engaging in surveillance of union organizing activities, or instructing employees to report on the union activities of other employees; interrogating employees concerning union activities; threatening employees with discharge or other reprisals because of their union sympathies or activities; altering employees' working conditions for the purpose of defeating union organizational efforts; interrogating and intimidating employees concerning their statements to Board agents; encouraging or coercing employees to withdraw from the Union; and "in any other manner" interfering with, restraining, or coercing employees in the exercise of their rights protected by Section 7 of the Act. See *National Labor Relations Board* v. *J.P. Stevens (Stevens XIII)*, 464 F. 2d 1326, 1329-1330 (C.A. 2), certiorari denied, 410 U.S. 926.

In July 1972, the court of appeals found the Company to be in contempt of its two prior decrees, noting that the Company had engaged in a "pattern of flagrantly contemptuous conduct" including "* * * such unlawful tactics as engaging in surveillance of organizing activities, interrogating employees about their union inclinations, threatening pro-union employees with discharge and other reprisals, discriminatorily altering their work conditions and discharging them because of their union sympathies."

(Stevens XIV), 217 NLRB 513, enforced, 547 F. 2d 792 (C.A. 4); *J.P. Stevens (Stevens XV)*, 219 NLRB 850, enforced, 547 F. 2d 792 (C.A. 4); *J.P. Stevens (Stevens XVI)*, 220 NLRB 270; *National Labor Relations Board* v. *J.P. Stevens (Stevens XVII)*, 538 F. 2d 1152 (C.A. 5); *National Labor Relations Board* v. *J.P. Stevens (Stevens XVIII)*, 563 F. 2d 8 (C.A. 2) (on comtempt), (the present case).

Stevens XIII, *supra*, 464 F. 2d at 1328-1329. To remedy the Company's unlawful and contumacious conduct, the court not only entered a broad cease and desist order as in the earlier decrees, but also directed that the Union be granted access to employee bulletin boards in all Company plants in North and South Carolina, and access to the five plants where violations of the decrees occurred, in order to enable the Union to respond to Company speeches to the employees concerning union representation and to address the employees prior to any scheduled Board election. The court also required the Company to provide the Union with a list of the names and addresses of employees at the five plants, to post a notice and copy of the court's adjudication in all of the Company's plants in North and South Carolina, to mail a copy of the notice to all of its employees in North and South Carolina, and to permit a Board agent to read the notice to the employees at the five plants.[4]

B. THE SECOND CONTEMPT PROCEEDING

In September 1973, the Board petitioned the court of appeals for an order adjudging the Company and certain of its supervisory personnel in contempt of the above decrees. The court appointed Monrad G. Paulsen, then Dean of the University of Virginia Law School, as Special Master to hear the evidence and make determinations of fact and law on the issues raised (Pet. App. 3a). Extensive hearings involving numerous witnesses were held, resulting in nearly 1400 pages of transcript and voluminous exhibits. The Special Master issued his report on September 28, 1976, finding that the Company and some 23 of its supervisors had violated the court's prior decrees (Pet. App. 4a, 43a-90a).

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[4]The court's remedial order was issued on September 13, 1972, and is reported at 81 LRRM 2285.

The court of appeals adopted the master's report as to the violations found and held that the Company and the 23 supervisors were in civil contempt of the court's prior decrees (Pet. App. 19a-20a, 30a). The conduct found to be contumacious may be summarized as follows:

At its plant in Turnersburg, North Carolina, the Company and its supervisors Mack Reneger, Max Shaver, Allen Shew, Junior Anderson, and Ed Mitchum carried out a campaign of interference with the statutorily protected solicitation and distribution activities of seven employees on the eve and day of a Board election at the plant (Pet. App. 6a-8a, 44a-50a).

In Wallace, South Carolina, the Company, through Personnel Director Harold Guerry and Safety Inspector Larry Burroughs, placed an electronic eavesdropping device in the motel room of a union organizer and monitored the meetings between organizers and Company employees during the Union's organizing campaign at two of the Company's Wallace plants (Pet. App. 13a-15a, 60a-67a). Supervisor Chester Martin discharged employee Moses Covington for engaging in union activities (Pet. App. 10a-11a, 52a-54a). Supervisors Ernest Meadows and Howard Sellers discriminatorily reprimanded employee Jimmy Grooms (Pet. App. 50a-52a). Personnel Director John Thomas interfered with statutorily protected leafletting activities of two employees and threatened them with discharge (Pet. App. 54a-56a). Supervisor Troy Quick coercively interrogated employee John Hunter and asked him to report to the Company on other employees' union activities (Pet. App. 11a-13a, 59a-60a).

At three of its plants in Roanoke Rapids, North Carolina, the Company coercively polled all of its employees to determine if they thought a union would "help" or "hurt" them. The polling, conducted by means

of a survey, constituted surveillance of union activities because the Company was able to identify the percentage of pro-union employees within each department and shift (Pet. App. 16a, 81a-82a). The Company later posted a notice in the three plants misrepresenting the results of the poll and leading employees to believe that support for union representation was substantially less than the survey results actually indicated (Pet. App. 16a, 82a-83a). Through its supervisors Ray Mabry, Eugene Taylor, James Alston, Dave Moody, Mason Lee, and Tommy Gardner,[5] the Company harassed, reprimanded, interrogated, and threatened an in-plant union organizer, employee Crystal Lee Jordan, and ultimately discharged her for union activities (Pet. App. 16a-19a, 69a-75a). Supervisor Mabry also discriminatorily reprimanded and suspended employee Cheryl Ann Wasmund and interfered with the statutorily protected leafletting activities of another employee (Pet. App. 67a-69a, 77a-79a). Supervisor Jimmy Martin likewise interfered with an employee's leafletting (Pet. App. 80a-81a). Supervisor Vernon Payne coercively interrogated employee Linda Williams, and supervisor Robert "Pete" Rawlings coercively questioned employee Sadie Lewis (Pet. App. 16a, 75a-77a). Supervisors William Hinton and Raymond Thompson made employee Joseph Williams' work assignments more difficult and ultimately suspended and then discharged Williams because of his pro-union activities (Pet. App. 16a, 83a-86a).

Based on the above unlawful conduct, the court of appeals concluded that "* * * there is the strong possibility that respondents 'deliberately took their

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[5]Supervisors Mason Lee and Tommy Gardner, as well as supervisor Robert "Pete" Rawlings (*infra*), were adjudicated in contempt in *Stevens XIII, supra*.

chances in ignoring our decrees because they thought it profitable for them to do so' " (Pet. App. 21a, quoting *Stevens XIII, supra,* 464 F. 2d at 1329). Adding that its experience with the Company "* * * raises grave doubts about the ability of the courts to make the provisions of the federal labor law work in the face of persistent violations" (Pet. App. 29a), the court issued an order patterned after its order in the first contempt proceeding, but expanded to remedy the effects of the Company's persistent contumacy and to provide prospective coercive measures to assure future compliance with the court's decrees (Pet. App. 31a-38a).

Thus, the court's order, as in *Stevens XIII,* contains broad cease-and-desist provisions; grants union access to Company bulletin boards; permits the Union to respond to Company speeches concerning union representation and to address employees prior to any Board election; requires the Company to give the Union lists of its employees' names and addresses, to post and mail notices of the court's adjudication, and to permit the court's notice to be read to its employees (Pet. App. 32a-36a). Moreover, the court determined that these remedies should be applied to all of the Company's plants in North and South Carolina (Pet. App. 22a-23a, 26a-27a).[6]

In addition, the court ordered the Company at all of its Carolina plants: (1) to establish a program for educating its supervisors "* * * in the area of the rights of union organizers and plant employees who wish to organize or who wish to join a union" (Pet. App. 34a); (2) to publish written non-discriminatory rules governing solicitation

[6]In *Stevens XIII,* certain of the remedies were limited to the five plants where violations had occurred (*supra,* p. 5).

and distribution of literature upon its property (Pet. App. 35a); and (3) to grant union organizers access to non-work areas "for the purpose of communicating orally and in writing with the employees" during non-working time (Pet. App. 36a).

Finally, the court imposed a prospective compliance fine against the Company in the amounts of $100,000 for each future violation of the court's decrees and $5,000 per day for each continuing violation. Prospective fines of $1,000 for each violation and $100 daily for each continued violation were established as to the individual contemnors. (Pet. App. 37a.)

ARGUMENT

1. Relying on this Court's decision in *National Labor Relations Board* v. *Babcock & Wilcox Co.,* 351 U.S. 105, which reversed a Board finding of an unfair labor practice by an employer, petitioners assert that the court of appeals lacked power to order the Company to grant the Union access to non-working areas in the Company's plants[7] absent evidence that "there are no alternative channels of communication reasonably available to the union" (Pet. 6). Petitioners are foreclosed from raising

[7]The specific provision of the court's order reads as follows:

> 15. For the two year period, upon request of the Union, the Company shall without delay, permit a reasonable number of Union representatives access for reasonable periods of time to all its canteens, rest and other non-work areas, including parking lots, within each of its plants in North and South Carolina, for the purpose of communicating orally and in writing with the employees in such areas during changes of shift, breaks, mealtime or other non-work periods. The Company shall formulate rules on this subject in the same manner as provided in paragraph 10. [Pet. App. 36a.]

this contention here, since they failed to raise it in the court of appeals.[8] See *Lawn* v. *United States*, 355 U.S. 339, 362 n. 16; *Neely* v. *Eby Construction Co.*, 386 U.S. 317, 330.

In any event, there is no merit to the contention. It fails to recognize that the court's order rests, not upon what is required to establish an unfair labor practice under the National Labor Relations Act, but upon "the power of a court to grant the relief that is necessary to effect compliance with its decree." *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187, 193. A court has power, both inherently and by virtue of the All Writs Act, 28 U.S.C. 1651(a) (see *United States* v. *New York Telephone Co.*, No. 76-835, decided December 7, 1977, slip op. 12-14), to take whatever action is reasonably necessary to insure that its decree is obeyed. "The measure of the court's power in civil contempt proceedings is determined by the requirements of full remedial relief." *McComb, supra*, 336 U.S. at 193.[9] Moreover, access remedies similar to those

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[8]Petitioners failed to challenge the access remedy on this ground although they had three opportunities—in their opening and reply briefs and in their post-decisional counter-proposal regarding the terms of the court's order—to do so after the remedy was proposed by the Board in its exceptions to the Master's report and in its opening brief to the court. (See Pet. App. 21a-22a and n. 21.)

[9]Nothing in *National Labor Relations Board* v. *Babcock & Wilcox Co., supra*, or the other cases relied upon by the petitioners (Pet. 6-10) suggests that these remedies are improper in the circumstances here. *Babcock & Wilcox Co.* held only that an employer, who had not otherwise violated the National Labor Relations Act, could not be held to have committed an unfair labor practice merely by denying union organizers access to company property where the organizers had reasonable alternative means of communicating with employees. 351 U.S. at 112-114. The accommodation between organizational rights under the Act and employer property rights

provided by the court of appeals here have been provided in other contempt proceedings where employers have created coercive atmospheres within their plants. See, *e.g.*, *National Labor Relations Board* v. *Johnson Manufacturing Co. of Lubbock*, 511 F. 2d 153, 157-158 (C.A. 5); *National Labor Relations Board* v. *Schill Steel Products, Inc.*, 480 F. 2d 586, 599 (C.A. 5).

The access remedy provided by the court of appeals is a reasonable means of dissipating the effects of the Company's continued contumacy, and of insuring future compliance with its decrees. As the court of appeals stated in concluding that the Union should be allowed access to certain non-work areas of the Company's Carolina plants:

> It is apparent from this contempt adjudication that the in-plant organizing activities of Stevens's employees have been frustrated and discriminated against by the Company's policies. We recognize that "[t]he policies of the [National Labor Relations] Act," in the context of a union organizing campaign, do not necessarily call for increased union access to the employees, but "call instead for a change in the plant's atmosphere." [*Stevens II, supra*, 388 F. 2d at

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struck in *Babcock & Wilcox* does not apply where, as here, an employer has repeatedly frustrated employee organizational activity and a remedy must be fashioned for such unlawful conduct.

The propriety of the access remedy here is not impaired by petitioners' speculative fear (Pet. 9) that it would deprive an employer of the right "to manage its operations in an efficient and peaceful fashion." The court's decree permits the company to formulate rules regulating access (note 7, *supra*). If these rules are reasonable, it cannot be assumed that the Union will violate them, and, in the unlikely event that it does, the Company could then petition the court for an appropriate modification of its order.

906.] But in this case, we believe that the two goals are complementary. Reasonable solicitations for the union should be permitted without the employees' fear that they will be reprimanded or placed under surveillance by their supervisors. Giving the union access to some non-work areas of the plants will help to reduce this atmosphere of fear, and is therefore an appropriate remedy to order in this case. [Pet. App. 27a-28a.]

2. There is also no merit in petitioners' contention (Pet. 10-14) that the court's order is impermissibly vague because it qualified some of its directives with the term "reasonable"—for example, that the Company provide the Union "reasonable" notice and "reasonable" access to the Company property. There is no basis for contending that those directives are "so vague that men of common intelligence must necessarily guess at [their] meaning" (*Connally* v. *General Construction Co.*, 269 U.S. 385, 391); and the use of the qualifying term "reasonable", if anything, should afford the Company greater latitude in the good faith management of its affairs. Far from being repugnant to Rule 65(d) of the Federal Rules of Civil Procedure, the term "reasonable" is found in numerous court orders under the National Labor Relations Act;[10]

[10]See, *e.g.*, *National Labor Relations Board* v. *Truck Drivers & Helpers Local 676*, 450 F. 2d 413, 415 (C.A. 3); *National Labor Relations Board* v. *Schill Steel Products, Inc.*, *supra*, 480 F. 2d at 599; *National Labor Relations Board* v. *Hickman Garment Company*, 471 F. 2d 611, 612 (C.A. 6); *National Labor Relations Board* v. *Lynair*, 380 F. 2d 286, 288 (C.A. 6); *National Labor Relations Board* v. *Ralph Printing & Lithographing Co.*, 433 F. 2d 1058, 1064 (C.A. 8), certiorari denied, 401 U.S. 925; *Stevens XIII*, *supra*, 81 LRRM at 2286. These decisions also offer ample precedent

indeed, Rule 65(d) itself uses the term "reasonable detail" as the descriptive standard for delineating acts to be restrained by court injunctions.[11]

3. Contrary to petitioners' contention (Pet. 15-17), the remedies ordered by the court of appeals are neither too broad nor too severe.[12] Faced with the "flouting of [its] orders not once, but twice" (Pet. App. 30a), and having found that " 'there is every reason to anticipate that if not deterred, [the Company] would pursue the same discriminatory policies throughout the region' " (*id.* at 22a), the court properly applied the remedies to all of the Company's plants in North and South Carolina, and imposed, in addition to the remedies previously imposed

for the use of the term "continuing violation," to which petitioners object (Pet. 11), in describing violations subject to prospective daily compliance fines.

In both *Cline* v. *Frink Dairy Co.*, 274 U.S. 445, 454, and *United States* v. *Cohen Grocery Co.*, 255 U.S. 81, 89, relied on by petitioners (Pet. 14), legislative enactments were struck down not simply because they contained the word "reasonable," but because they left open the "widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against." See *United States* v. *Powell*, 423 U.S. 87; *United States* v. *National Dairy Corp.*, 372 U.S. 29, 35-36. Here, on the contrary, the reasonableness of petitioners' conduct and the continuing nature of the violations can be measured objectively.

[11]Moreover, in light of the Company's repeated contumacy, the court properly declined to impose a more specific blueprint for Company conduct. "Decrees of that generality are often necessary to prevent further violations where a proclivity for unlawful conduct has been shown." *McComb* v. *Jacksonville Paper Co.*, *supra*, 336 U.S. at 192.

[12]Since the remedies were intended to be, and are, remedial rather than punitive, petitioners are in error (Pet. 15, 18-19) in equating these proceedings with criminal contempt proceedings. See *Shillitani* v. *United States*, 384 U.S. 364.

(and violated), the access remedy discussed previously (pp. 9-12) and the prospective compliance fines discussed below.[13]

The amounts of the prospective compliance fines imposed by the court meet the criteria laid down in *United States* v. *United Mine Workers*, 330 U.S. 258, 304-305. The "harm threatened by continued contumacy" (*id.* at 304) is substantial due to the failure of prior court orders to halt the unlawful conduct "* * * that has earned the Company its reputation as the 'most notorious recidivist' in the field of labor law" (Pet. App. 3a). Substantial prospective fines are therefore necessary to insure "the probable effectiveness [of the court's decree] in bringing about the result desired" (330 U.S. at 304), particularly in view of the court's determination that petitioners "* * * deliberately took their chances in ignoring our decrees because they thought it profitable for them to do so" (Pet. App. 21a). Moreover, in removing the profit incentive for the Company's unlawful conduct, the court properly recognized that "the amount of [the Company's] financial resources" (330 U.S. at 304) is substantial. Given the Company's net worth of more than

[13]The furnishing of employee lists to the Union (Pet. App. 27a, 36a) was ordered not only in the earlier contempt proceeding (81 LRRM 2285), but also in unfair labor practice cases against the Company in other circuits: *J.P. Stevens* v. *National Labor Relations Board, supra*, 406 F. 2d at 1022-1024 (C.A. 4); *J.P. Stevens* v. *National Labor Relations Board, supra*, 417 F. 2d at 540 (C.A. 5). Similarly, the opportunity given the Union both to make pre-election speeches and to rebut Company speeches concerning union representation was afforded in the earlier contempt proceeding. 81 LRRM 2285. See also *National Labor Relations Board* v. *Crown Laundry*, 437 F. 2d 290, 294 (C.A. 5).

$450,000,000 and its fiscal 1976 profits of more than $41,000,000, the fines imposed on the Company for future violations of the court's decree are not excessive.[14]

4. Petitioners' contention (Pet. 17-19) that the court of appeals' findings of contempt are not based on clear and convincing proof depends on an evaluation of the facts of this particular case, and does not warrant review by this Court. See *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 490-491. Moreover, the Special Master's report (Pet. App. 43a-90a), which was adopted by the court (Pet. App. 19a-20a), shows that the findings of contempt are based on clear and convincing evidence. The court properly rejected (Pet. App. 9a-10a) petitioners' contention (Pet. 18-19) that it was necessary for the Board to demonstrate that the violations of the court's decrees were committed wilfully. It is well established that "[t]he absence of wilfulness does not relieve from civil contempt." *McComb* v. *Jacksonville Paper Co., supra*, 336 U.S. at 191.

[14]Compliance fines of similar size have been imposed in other civil contempt cases involving large corporate or union contemnors. *United States* v. *United Mine Workers, supra* ($2,800,000); *United States* v. *Greyhound Corp.*, 370 F. Supp. 881, 885 (N.D. Ill.), affirmed, 508 F. 2d 529, 541 (C.A. 7) ($600,000); *League of Vol. Hosp. & H. of N.Y.* v. *Local 1199, Drug and Hospital Union*, 490 F. 2d 1398, 1404 (T.E.C.A.) ($500,000); *International Business Machines Corp.* v. *United States*, 493 F. 2d 112, 116-117 (C.A. 2), certiorari denied, 416 U.S. 995 (daily fine of $150,000).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-726

J. P. STEVENS & CO., INC., and JUNIOR ANDERSON, MASON LEE, TOMMY GARDNER, JAMES ALSTON, LARRY BURROUGHS, HAROLD GUERRY, WILLIAM HINTON, RAY MABRY, CHESTER MARTIN, ED MITCHUM, ERNEST MEADOWS, DAVE MOODY, VERNON PAYNE, TROY QUICK, JIMMY MARTIN, ROBERT RAWLINGS, MACK RENEGAR, MAX SHAVER, HOWARD SELLERS, ALLEN SHEW, EUGENE TAYLOR, JOHN THOMAS, RAYMOND THOMPSON,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITIONERS' REPLY BRIEF

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v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITIONERS' REPLY BRIEF

The Brief in Opposition filed by Respondent does not dispute Petitioners' contention that this case poses novel and important questions regarding the extent to which a court's contempt power may be used to infringe upon an employer's fundamental right to control the use of his property. Indeed, the Brief in Opposition illustrates the extent to which Respondent will continue to advocate the imposition in contempt proceedings of orders granting nonemployee union representatives access to an employer's plants and facilities despite this Court's holding in *NLRB* v. *Babcock & Wilcox Co.*, 351 U.S. 105 (1956). Furthermore, Respondent does not establish that the order of

the Court of Appeals comports with Rule 65(d) of the Federal Rules of Civil Procedure and the due process clause of the Constitution. Accordingly, Supreme Court guidance is required to define the limitations on a court's power in civil contempt proceedings arising from violations of a court's order enforcing the National Labor Relations Act.

Furthermore Respondent's Brief presents this case as if it were run-of-the-mill labor litigation in which unexceptional directives have been imposed on J. P. Stevens & Co., Inc. ("Stevens" or "the Company") to remedy clearly established offenses. This case is, on the contrary, quite the opposite in both of these fundamental respects. Its directives are of extraordinary severity and, in important part, unprecedented. And the offenses which purportedly justify such directives cannot in any respect fulfill the clear and convincing standard essential to support a contempt determination.

Respondent alleges that Petitioners are "foreclosed" from challenging the power of the Court of Appeals to issue an access order that infringes on an employer's right to control the use of his property because such an argument was not made in the Court of Appeals. Respondent, however, has overlooked that portion of the "Counter-Statement Regarding Terms of Court Order," submitted by Petitioners in the Court of Appeals, in which Petitioners specifically objected to the imposition of the access provisions:

> The simple and realistic fact is that under the Board's provisions for the "non-work areas" of these plants, the Company would have lost the ability to manage the operations of its plants as truly as if the plants had been taken away from the Company by court order.

Moreover, Respondent claims that because the order of the Court of Appeals is based upon the civil contempt power, the Court of Appeals properly ignored the constraints imposed by the National Labor Relations Act. Indeed, Respondent argues that a court, in seeking to enforce compliance with the National Labor Relations Act by its contempt power, may properly infringe on an employer's right to control the use of his property even though this right is protected under the National Labor Relations Act.* Given the importance of this issue to labor-management relations, it is essential that this Court delineate the restraints on a court's civil contempt power in cases arising under the National Labor Relations Act.

Respondent's reliance on two cases from the Fifth Circuit to support the propriety of the Court of Appeals' access edict does not generate support for Respondent's position in this Court. In neither *NLRB* v. *Johnson Manufacturing Co.*, 511 F.2d 153 (5th Cir.), *cert. denied*, 423 U.S. 867 (1975), nor in *NLRB* v. *Schill Steel Products, Inc.*, 480 F.2d 586 (5th Cir. 1973), was this Court asked to review those portions of the orders that granted nonemployee union representatives access to the employers' plants and facilities. These cases can hardly be relied on to justify the vast

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* Respondent has ignored the legal doctrine stated in the Petition that while "[t]he measure of the court's power in civil contempt proceedings is determined by the requirements of full remedial relief," *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187, 193 (1949), the terms of such relief must protect public and private rights and abide by "well-settled principles of law." *McComb, supra*, at 191; *Union Tool Co.* v. *Wilson*, 259 U.S. 107, 112 (1922). Indeed, the All Writs Act, 28 U.S.C. § 1651(a), cited by Respondent to support its position, requires that all writs issued by a court be "agreeable to the usages and principles of law."

incursion on an employer's right to control the use of his property which Respondent is seeking here.

Further, there is no basis for Respondent to describe as "speculative fear" Petitioners' concern that the access order will deprive an employer of the right to manage his operations in an efficient and peaceful manner. (Brief in Opp., note 9 at 11) Implementation of the order will permit professional union organizers to solicit continually employees in the "non-work" areas of the plant. Moreover, because Paragraph 14 of the order requires the Company to provide union organizers with the names and addresses of all its employees in North and South Carolina, implementation of the access order will insure that every employee of the Company will be constantly approached by professional union organizers during the employee's working hours, during the employee's breaks, and during the employee's non-working time spent at home. Indeed, implementation of the order could infringe on an employee's right to refrain from organizational activities as guaranteed by Sections 7 and 8(b)(1)(A) of the National Labor Relations Act.

Petitioners also take issue with Respondent's contention that there is no basis for finding the order of the Court of Appeals to be so vague as to be violative of Rule 65(d) of the Federal Rules of Civil Procedure and the due process clause of the Constitution. It is interesting to note that Respondent does not attempt to define the meaning of the term "reasonable" as used throughout the Court's order. Having proposed this order, Respondent should be able to indicate with specificity the meaning of a mandate permitting a "reasonable" number of union representatives access for "reasonable" periods of time to the non-work areas in the Company's plants. Instead, Respondent

argues that the term "reasonable" is found in numerous court orders under the National Labor Relations Act. Analysis of the cited cases reveals that many of the court orders do not even use the term "reasonable." Moreover, in one instance where the term "reasonable" was used in a court's order, the court was able to refer to prior cases that specifically interpreted the meaning of the word "reasonable" as used in the order. *NLRB* v. *Lynair,* 380 F.2d 286 (6th Cir. 1967). Finally, none of the cases cited by Respondent can be compared with the instant case where the Company is threatened with massive fines and the issuance of writs of body attachment against its officers and agents for noncompliance with an order that defies specific interpretation.

Respondent further argues that the "use of the qualifying term 'reasonable,' if anything, should afford the Company greater latitude in the good faith management of its affairs." (Brief in Opp. at 12) Indeed, it is this very "latitude" that will serve as an invitation to the union to challenge on every occasion the conduct of the Company, which could result in a finding that good faith action on the part of the Company was not "reasonable" and constituted a "continuing violation" of the Court's order.

The vagueness of the Court's order is further compounded in that the Court of Appeals has imposed excessive "compliance fines" upon the Company in the amount of $100,000 for each violation and $5,000 per day for each day the violation continues. Respondent contends that these compliance fines are not excessive and are in fact comparable with compliance fines imposed in other civil contempt cases. (Brief in Opp., note 14 at 15) Yet of the cases cited by Re-

spondent in support of this argument, one case involved a criminal contempt fine and is therefore supportive of Petitioners' position that the compliance fine is punitive. *United States* v. *Greyhound Corp.*, 370 F.Supp. 881 (N.D.Ill.), *aff'd*, 508 F.2d 529 (7th Cir. 1974). However, of more importance, the civil contempt cases cited by Respondent threatened imposition of compliance fines for noncompliance with precise directives from the courts. None of the cases required the contemnors to conduct certain activities in an undefined "reasonable" manner, as required by the order of the Court of Appeals.

Finally, Respondent's Brief summarizes the various incidents which led to the findings against the Company as though such incidents were indisputable violations of the National Labor Relations Act constituting "clear and convincing" evidence of contempt and deserving of the drastic sanctions imposed by the Court of Appeals. The Petitioners are well aware that this Court cannot analyze and weigh evidence in order to determine what is the correct version of a factual controversy. However, Respondent's treatment of the facts underlying the decision of the Court of Appeals cannot be left unchallenged.

Respondent refers to three incidents that occurred at the Company's plant in Turnersburg, North Carolina, as a "campaign of interference with the statutorily-protected solicitation and distribution activities of seven employees on the eve and day of a Board election at the plant." (Brief in Opp. at 6) In all three incidents, employees who were distributing leaflets on the Company's property were asked to distribute the leaflets off the premises. The employees involved in these incidents were neither reprimanded, discharged

nor "written up" for these activities. (Pet. App. at 50a) The Special Master found this conduct contemptuous because the Company had no specific rules prohibiting these activities and the Company on earlier occasions had condoned the sale of merchandise in the plant and also had permitted solicitation on the premises for sick employees and families of deceased employees. (Pet. App. at 47a) In fact, in one of the three incidents the Company was held in contempt for requesting that leafletting in the plant on the day of the election be ceased even though an agent of the National Labor Relations Board who was observing the election subsequently required that the distributors of the literature be asked to leave the premises because leafletting was not permitted on the day of the election. (Pet. App. at 46a)

Respondent also states that the Company placed an electronic eavesdropping device in the motel room of a union organizer and monitored the meetings between the union organizer and Company employees. (Brief in Opp. at 6) Two employees were indicted for this incident, but after trial the United States District Court directed an acquittal. A third employee was found by the Special Master not to have been involved. No other person in the Company's management was charged by any law enforcement official or by the Respondent as having had any involvement in the matter. The Court of Appeals found that the Company repudiated such conduct in a timely and unequivocal manner but that its repudiation was deficient because it failed to indicate that the Company would make no use of any information it might have obtained from the eavesdropping—a conclusion which could properly be considered to be inherent in an unequivocal repudiation. The Court of Appeals concedes that "the

facts are close," but that the Company's "anti-union background" was a factor in tipping the balance. (Pet. App. at 15a)

With regard to the incident involving employee Jimmy Grooms, which Respondent characterizes as a discriminatory reprimand (Brief in Opp. at 6), Respondent ignores the fact that Grooms was ordered to stay especially close to his machine to prevent the production of inferior cloth. (Pet. App. at 51a) Grooms was later found to be wandering away from his machine, and was reprimanded. Yet because of Grooms' past union activities, the Special Master held that this reprimand was in contempt of the Court's prior decree. (Pet. App. at 52a)

Respondent has also misrepresented the incidents at the Roanoke Rapids, North Carolina plants of Stevens. Respondent claims that the Company "coercively polled" all of its employees at these plants to determine if they thought a union would "help" or "hurt" them. (Brief in Opp. at 6) The polling, conducted by means of an employee opinion survey, is misinterpreted by Respondent as a surveillance of the employees' union activities. Respondent further accuses the Company of misrepresenting the result in a posted notice. The survey, conducted by an outside professional group hired by the Company, contained 48 questions, of which only one dealt with employees' attitudes toward the union. The answers by any given employee were not identifiable by the Company and the employees were not required to participate in the survey. The notice, which dealt only with the one question concerning the union, was posted at the insistence of Respondent. With regard to the claimed misrepresentation, the Special Master stated that the Company's version of the result was "reasonably accurate if supervisory personnel are added." (Pet. App at 83a) Although these supervisory individuals were at all times included in the survey, the Special Master found that because there appeared to be a misrepresentation "in the eyes of the average non-supervisory employee," Stevens had interfered with the employees' right to self-organization as required in a prior decree. (Pet. App. at 83a)

Respondent's assertion that the Company discharged employee Crystal Lee Jordon because of her union activities (Brief in Opp. at 7) ignores the Special Master's statement that it was likely this employee may have been fired because of her "shrill conduct." (Pet. App. at 74a) Nevertheless, the Special Master still found "clear and convincing" evidence that she was fired because of her union activities. With regard to Respondent's statement that supervisor Vernon Payne coercively interrogated employee Linda Williams (Brief in Opp. at 7), the Special Master found that the supervisor involved spoke to this employee regarding complaints made by other employees about Williams' "bothering" and "harassing" them. (Pet. App. at 76a) Again, because the employee involved was a union supporter, the Special Master found "clear and convincing" evidence of interference with an employee in the exercise of her right to organize or to assist the union. The Special Master made no finding of a coercive interrogation with regard to this incident, as Respondent claims.

These examples are representative of the incidents which the Respondent and the Court of Appeals consider as constituting "clear and convincing" evidence of contemptuous conduct, and which have led to the

imposition by the Court of Appeals of remedies of the enormous severity delineated by the Company in its Petition.

CONCLUSION

This brief analysis of the procedures used to justify a finding of contempt illustrates the need for Supreme Court guidance on the proper interpretation and application of the clear and convincing standard in civil contempt proceedings. This guidance is especially necessary here where a court has imposed penalties and sanctions which are disproportionate in both magnitude and severity. Finally, this Court should consider whether a court may infringe on an employer's right to control the use of his property in a civil contempt proceeding arising under the National Labor Relations Act and whether an order so dependent upon the frequent application of a "reasonable" standard and which threatens massive compliance fines and writs of body attachment is violative of Rule 65(d) of the Federal Rules of Civil Procedure and the due process clause of the Constitution.

Respectfully submitted,

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